Award No. 5758
Docket No. 5519
2-C&O-EW '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYES' DEPARTMENT, AFL - CIO (ELECTRICAL WORKERS)

THE CHESAPEAKE & OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chesapeake and Ohio Railway Company violated the current Agreement on May 2, 1966, when it assigned other than electrical workers to remove an auxiliary generator from Diesel #6205.

2. That accordingly, the Carrier be ordered to additionally compensate Electrician Charles Grass in the amount of two hours and forty minutes (2 hours and 40 minutes) at the time and one-half rate of pay for said violation.

EMPLOYES STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the Carrier, maintains a Diesel Locomotive Repair Shop at Huntington, West Virginia. Electrician Charles Grass, hereinafter referred to as the Claimant, is regularly employed at the Huntington Shops as Electrician, and holds Seniority rights at this point and was first out on the Overtime Board.

On May 2, 1966, the Carrier allowed two Machinists to remove the base bolts and the auxiliary generator from diesel engine 6205, which work the Carrier acknowledges and agrees, is assigned to the Electrical Workers Craft at Huntington Shops.

The removal and application of the auxiliary generators are not claimed by the International Association of Machinists and Aerospace workers as evidenced by clearance letter dated July 28, 1867, submitted as employes exhibit B.

This dispute has been handled with all officers of the Carrier designated to handle such disputes, including the highest designated officer of the Carrier, all of whom have declined to make satisfactory adjustment.

The Agreement of July 21, 1921, as subsequently amended is controlling.

employes over which it has no control and has no knowledge until the act has been done. What was done involved only a few minutes time and quite understandably would not normally be detected by the supervision in a large and busy shop.

To hold the Carrier liable for such unauthorized and unnecessary acts would place it in an impossible situation and subject it to limitless claims. Obviously a supervisor cannot be at the elbow of each and every employe to assure that they do only that which they have been instructed to do in each and every instance and nothing more. This case resulted simply from the unauthorized act of two machinists who were either ambitious or desirous of fomenting strife between the crafts. It is an isolated incident and one that was not repeated insofar as the Carrier has knowledge.

It has been recognized many times by the various divisions of the Board that the Carrier is not to be penalized for voluntary and unauthorized acts such as that which gave rise to the instant claim. It is well known that, from time to time, some individual may, through ignorance or lack of concern, do some item of work which has not been allocated to his craft. But it does not follow that such isolated incidents indicate lack of faith on the part of the Carrier nor do they create a threat to the craft that alleges injury. See Second Division Award 4217 (McDonald) in which the carmen of System Federation No. 41 were involved. The Findings stated in part:

> "The record is devoid of any actual knowledge of the work by the Carrier, or any circumstances which would charge the Carrier with knowledge of it until after the work had been accomplished. We do not feel that there was any intent by the Carrier to deprive Carmen of this work. . . ."

Also see Award 4803 (Robertson) which also involved carmen on this Carrier. The Findings read:

> "We can see no merit in this claim. There is no doubt that the conductors performed this work without any direction from Carrier supervisors. Carrier received no particular benefit by reason of the conductor performing the work involved since if it actually had to be performed at Handley it could have been performed easily by carmen who were stationed around the clock at the point and who actually observed the claimant in the act of lubricating the journal boxes."

What was said in this award holds true in the instant case. Carrier received no particular benefit by reason of the machinists removing the generator because if it was to be done by electricians those on duty could have done it in the usual course of their regular duties.

On all counts the claim fails. It should be denied.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier or carriers and the employe or employes involved in this

dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claim, as stated, is account other than electrical workers removed an auxiliary generator from Diesel Engine #6205 on May 2, 1966.

The Local Chairman, I.B.E.W. #549, put in a time card on or about May 12, 1966 naming Electrician Grass as claimant. The charging part of the time claim reads:

> "I am turning in time claim for four hours against the machinists for the removal of the base bolts of an auxiliary generator which was removed from engine #6205 on the second shift of May 2, 1966."

Evidence is not at hand to show that the time claim was amended at any stage of handling on the property.

Electrician Grass is regularly employed and holds seniority rights at Carrier's Diesel Locomotive Repair Shop. Huntington, West Virginia, at which point Machinists allegedly removed "base bolts" from an auxiliary generator which was removed from engine 6205. Claimant Grass was first out on the extra board at the time which is prima facie evidence that he is a proper claimant and Carrier does not except.

The time claim was handled initially for Carrier by the General Shop Superintendent. He answered in part:

> "Machinist did **remove the auxiliary generator** from this locomotive without any instructions from their supervisor, and we have handled this very forcibly with all parties concerned to prevent any future recurrence as this." (emphasis supplied.)

Nevertheless, the Superintendent denied the time claim on the grounds that no money damages were sustained; that, the craftsmen made a mistake and were acting at the time without any instructions from supervision.

The Employes construed the Superintendent's answer to be that the removal of an auxiliary generator from the Diesel Locomotive is the work of Electricians and pressed for payment of the time claim in all stages of progressing same on the property.

Following receipt of the Superintendent's answer the Employes obtained a letter from the Machinists' General Chairman in which he disclaimed, for his craft, "the **removal** and **applying** of the **auxiliary generator to or from the bracket.**" (emphasis supplied.)

Carrier's highest officer on the property, for handling time claims and grievances, does not share the view of others including the Superintendent that the dispute is over the Machinists' right to remove the gen-

erator from the locomotive. He holds out for proof that the removal of "base bolts" of an auxiliary generator is the work of Electricians. He has a position on this which needs to be investigated.

The Local Chairman, who made the claim, was closest to the incident for making his own investigation and he reports that Machinists did remove the "base bolts" of an auxiliary generator. What auxiliary generator? "An auxiliary generator which was removed from engine #6205." When? "On the second shift May 2, 1966."

The Machinists' General Chairman does not appear to be disclaiming the work for his craft involving the removal of the auxiliary generator from the engine, nor for the removal of "base bolts" of said generator. His reference is to the removal of the auxiliary generator from the "bracket."

Carrier apparently agrees with the Machinists' General Chairman, on authority of Decision No. 115, Docket No. 115 Electrical Workers vs. Machinists, C&O Railroad, involving a jurisdictional dispute over work on auxiliary generators or exciters on EMD diesel locomotives, which granted Electricians the right to "remove and apply auxiliary generator or exciter to and from the main generator and remove, apply and tighten cap screws bolting auxiliary generator to bracket"; but, granted Machinists the right to "remove, apply and tighten cap screws (bolts) and shims from the base of pads or brackets where it is bolted to the top of the main generator."

Carrier's position is, however, that the auxiliary generators are bolted to brackets and the brackets are bolted to the main generator; that Carrier does not take issue with the Machinists' General Chairman's contention that removal of the auxiliary generator from the "brackets" is Electricians' work; but, according to Carrier, when an auxiliary generator is removed, the cap screws (bolts) which bolt the auxiliary generator to the main generator are removed, and the auxiliary generator is lifted with the brackets attached; that, therefore, the Machinists' General Chairman's statement is entirely proper, but is completely irrelevant to this dispute because the work not claimed by Machinists was not done by them or the Electricians in this case, according to Carrier.

On the basis of the entire record, the Division finds that Carrier's contention which holds that the time claim should be denied account "nobody being denied any monetary compensation," is without merit.

The Division further finds, on the basis of the evidence, that a night foreman was on duty, and in charge, to assign the work and to direct the working forces; so, therefore, Carrier's further contention that the work in dispute can be attributed to a "mistake by craftsmen without any instructions from supervisor or representative of management" is not convincing and is hereby overruled as without merit.

Claim (1) is hereby dismissed without prejudice to Decision No. 115, supra, for the reasons that:

While neither party may "change its hold" before the Division for the first time, Carrier certifies that "all data submitted herein has been presented to the Employes on the question in dispute." Therefore, the

Employes had due and timely notice that the highest ranking officer on the property, in such matters, did not concur in the Superintendent's opinion which has been made the basis for claim that the Electricians' Agreement was violated.

No rule of Agreement is in evidence and the Division is under no duty to search said Agreement for a rule in support of the claim at issue.

The nebulous time claim could lead to an erroneous interpretation and application of Decision No. 115, Docket No. 115, to the matter in dispute.

Machinists are a necessary party to this dispute and have not been joined by a third party notice.

Claim (2) is without substance after dismissal of Claim (1) and will be denied, as per Award.

AWARD

Claim (1) dismissed in accordance with findings.
Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1969.

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