

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (Brotherhood of Railway Carmen of the United States
(and Canada
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That the Soo Line Railroad Company violated Rules 27, 28, and 94 of the controlling agreement, November 29, 1978 when they assigned Boilermakers to set up and weld three cross ties for the repair of Soo Line freight car 18568 in A shop, track S. 14., Fond du lac, Wisconsin.
2. That the Soo Line Railroad Company be ordered to compensate Carmen W. Zinniel and Mr. O'Neil, for four (4) hours at Straight time, Carmen Welders, rate of pay, for their violation of November 29, 1978.

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 employes 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.

The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, a third party at interest, was notified of this dispute and made a response.

The issue here is work on fabrication of three cross ties ("I" beams) to be used in connection with the repair of freight cars. The Carrier assigned this work to Boilermakers, and it is the Organization's contention that this work should have been performed by Carmen.

The record shows that cross ties of this variety are normally carried as a stock item, not requiring fabrication by either craft. Both the Carmen and the Boilermakers offer evidence that such work has been performed by each of their crafts and that it is covered by their classification of work rules. The Carmen view this work as part of their car repair work, while the Boilermakers view this as metal fabrication within their jurisdiction.

The underlying question is whether this constitutes a jurisdictional dispute or whether this is simply an erroneous assignment of work by the Carrier. On this point, Award No. 7200 states:

"A jurisdictional dispute normally deals with the introduction of a new operation or procedure or a continuing dispute between two crafts where classification of work rules either do not refer specifically to the work in question or where there is reasonable grounds to show that two or more rules cover the work involved. A single instance of assignment of work to one craft, where it is clearly shown that it belongs to another craft, can hardly be relegated to the jurisdictional dispute procedure. Rather, such specific and provable misassignment may surely yield to the regular dispute procedure and/or resolution by this Board. To hold otherwise would mean that a Carrier could assign any work at any time to any craft without being held responsible for damages of such error."

Contrary to the circumstances involved in Award No. 7200, the Board finds here no clearcut misassignment. As noted above, cross bars are normally carried as a stock item. When fabrication is required, the record shows a genuine and well reasoned disagreement between the two crafts as to proper assignment of the work.

In view of this, the Board is compelled to yield to the agreement made by the parties as to the resolution of such disputes by the crafts themselves. (An attempt to do so in this instance was initiated by the Carmen with the Boilermakers, but without mutual resolution.) The February 15, 1940 Agreement states as follows:

"Effective from this date, we, the undersigned, agree that no general chairman, or other officer, representative or member of any of the organizations signatory hereto, will individually request management to take work from one craft and give it to another craft.

We further agree that we will find a way to reach an agreement and settle any disputes that may arise between any two crafts signatory hereto, involving jurisdiction of work, and when such dispute has thus been settled, then request will be presented to management for conference to negotiate the acceptance by management of the settlement thus made."

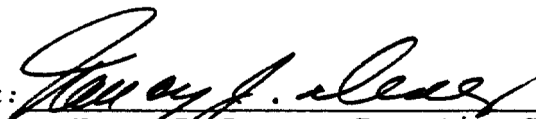
It is this means of dispute resolution which the parties have chosen, and the Board is thus without jurisdiction.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.