Award No. 5619
Docket No. 5142
2-SOU-MA-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That on January 15, 1965, the work contracted to the class and craft of Machinist at the Carrier's Spencer, North Carolina Diesel Shop, at the Carrier's Greensboro, North Carolina Diesel Shop and at the Carrier's Danville, Virginia Diesel Shop, was turned over to foremen, carmen, laborers and others not covered by the controlling agreement, and that as a consequence thereof, Machinists C. M. Huffine, B. K. Lentz, F. C. Cain, J. H. Higdon, John Wands and C. R. Canup of the Spencer, N. C. Diesel Shop; E. H. Blackwell of the Greensboro, N. C. Diesel Shop and R. J. Cable of the Danville, Virginia Diesel Shop were wrongfully furloughed.

2. That accordingly, the Carrier be ordered to restore this work to the class and craft of Machinists, and that Machinists Huffine, Lentz, Cain, Higdon, Wands, Canup, Blackwell and Cable be returned to their former positions with pay for all time lost, and in addition, be made whole for all fringe benefits lost, such as vacations, holidays and insurance premiums.

EMPLOYES' STATEMENT OF FACTS: In Award 5335, with Referee William H. Coburn as Referee, the Second Division directed the parties to conduct a joint check pursuant to the provisions of Articles III and IV of the January 27, 1965 Agreement at the points of Spencer, Greensboro and Danville and report the results to your Division.

The check was **not** made pursuant to the terms of the Agreement. The employes were refused the right to check work reports and question those who have been performing work.

The Carrier did admit that Carmen are used to repair and maintain machinery which, prior to all Machinists being furloughed at Spencer, was a

the protection of its interests. Carrier also requests that it again be permitted to appear before the Board with the referee present.

Claims which the Association here attempts to assert being barred and the Board under its rules of procedure not having jurisdiction over them should be dismissed for want of jurisdiction.

(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 were given due notice of hearing thereon.

In Award No. 5335 the Board, with this Referee participating, directed the parties to conduct a joint check, pursuant to Article III and IV of the Agreement of January 27, 1965, to determine (a) the amount of craft work being performed by supervisory employes, and, (b) whether there was sufficient craft work to justify the employment of Machinists at the following locations:

Spencer, North Carolina

Greensboro, North Carolina

Danville, Virginia

Pending receipt of the results of that check, the Board retained jurisdiction of the claim.

Each of the representatives of the parties submitted a report based upon the results of the joint check to the Second Division, which, on September 18, 1968, conducted a hearing in the presence of the Referee. Representatives of the parties appeared and participated in that proceeding.

The Employes argued that the joint check was not made in accordance with the cited provisions of the National Agreement because they were not permitted to check work records and to question those who had been performing work at the aforesaid locations; that, therefore, the joint check did not disclose the full volume of Machinists' work nor the full volume of craft work performed by Foremen. They asserted that the Carrier did admit that Carmen were used to repair and maintain machinery which, prior to their being furloughed at Spencer, was work assigned to Machinists, and that Carmen were used to change out wheels on locomotives and to assist whenever needed in the performance of other Machinists' work. The Employes stated that despite the restrictions placed on the check by the Carrier they "reluctantly" proceeded and that the results nonetheless show a violation of the basic and National Agreements at each of the three locations.

The Carrier submitted a detailed report of the joint check made by the representatives of the parties at each of the three locations. It argued that on the basis of the facts so produced and presented there was no violation of any agreement rule because that evidence establishes there was insufficient work to justify the continued employment of Machinists at the specified points and that Carmen and Foremen did not perform Machinists' work as defined by Rule 61 of the basic Agreement. The Carrier pointed out that the Employes agreed to check the work performed on one shift only at each of the locations involved as typical of that performed on the other shifts; that, accordingly, they may not be heard to complain now. It asserted that the Employes at no time requested a joint check be made of all the work performed by all crafts although it was ready and would have agreed to do so upon request. The Carrier further contended that the joint check was made in accordance with the terms of the National Agreement which, contrary to the position of the Employes, does not contemplate a formal investigation requiring the calling and examination of witnesses and the production of such documentary evidence as "old work reports (which) do not reflect all the facts." (Letter 2–20–68 from Director Labor Relations to General Chairman.) The Carrier also asserted that Article III of the National Agreement does not nullify Rule 31 of the basic agreement which permits Foremen, under certain conditions, to perform craft work. Thus, it argued the work here shown to have been performed by Foremen was no more than that permitted by agreement of the parties. Finally, the Carrier alleges the Employes failed to meet the burden of proof test and that, in addition, the claim here presented should be dismissed because it is not the claim presented and handled on the property.

In Award No. 5335 the Board found that the Second Division had jurisdiction of this dispute and would retain jurisdiction pending the receipt of the report of the joint check. Accordingly, the Carrier's motion made here to dismiss the claim on jurisdictional grounds is denied.

On the merits, we repeat what was said in Award No. 5335; that the sole issue here presented is one of fact and the only credible source of the determinative facts is the joint check made by the representatives of the parties pursuant to the mandate of Award No. 5335. The parties have jointly prepared and submitted copies of detailed reports of work performed by a Foreman and Electrician at Spencer, North Carolina, and by Foremen at Greensboro, North Carolina and Danville, Virginia, based upon a joint check of single shifts agreed to be typical of the work done on other shifts at those locations. The Board holds these reports constitute sufficient evidence of probative value upon which to base its conclusions and findings.

The Employes allege that the reports of the joint checks show that the electrician at Spencer ". . . is performing some work which would ordinarily be assigned to a Machinist" and that the Foreman at that point ". . . also performs work of the Machinists' Craft, as well as work of Mechanics of other crafts." They further assert the reports establish that Foremen at Greensboro and Danville ". . . are performing work not only of Machinists, but of all crafts." They do not specify or identify either the particular work or the amount of such work alleged to be exclusively that belonging to Machinists or to other crafts under the work classification rules. It appears to the Board that such specification is one essential element of the Employes' burden of proving their case, and that the general statements made by them,

standing alone, cannot prevail in the face of the Carrier's stated defenses. Accordingly, we find that the joint checks show a preponderance of the work performed by the electrician at Spencer was electrical craft work and that such other minor tasks performed by him cannot be held work which is exclusively reserved for Machinists under Rules 61, 62 and 63 of the basic agreement. Moreover, such work is expressly treated as permissible under Article IV of the January 27, 1965 Agreement. We also find that the preponderance of the work performed by foremen at the three locations consisted of the usual and customary duties of supervisory personnel in this industry.

The sole remaining question, then, is whether the small amount of incidental craft work shown to have been performed by foremen constitutes a violation of Article III of the January 27, 1965, National Agreement. Article III is entitled "Assignment of Work – Use of Supervisors:" and reads, in pertinent part, as follows:

> "None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employes employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts.
>
> If any question arises as to the amount of craft work being performed by supervisory employes, a joint check shall be made at the request of the General Chairmen of the organizations affected. Any disputes over the application of this rule shall be handled as provided hereinafter."

Rule 31 of the basic agreement between these parties reads:

> "This rule shall not apply to foremen at points where no mechanics are employed or to foremen or assistant foremen at other points in charge of small forces whose time is not fully occupied in supervisory duties."

The Employes take the position that Article III supersedes and repeals Rule 31; that, therefore, a foreman may perform no craft work except at points where no mechanics of any craft are employed. The Carrier asserts that Article III on its face contemplates the performance of a limited amount of craft work by foremen and that the article supplements rather than repeals Rule 31.

Second Division Awards 5242 (Referee Johnson) and 5340 (this Referee) hold that Article III does not supersede the assignment of work rules (such as Rule 31) of the basic agreement which, among other things, recognizes the right of foremen to perform work incidental to their duties, but merely supplements those rules by limiting the amount of craft work which may properly be performed by supervision at points where no mechanics are employed. **Contra:** Awards 5487, 5488 and 5489 (Referee Knox). With all due respect to the reasoning of the latter awards, we find that the former set forth the correct interpretation of the cited rules of the agreements in evidence here. Accordingly, the Board finds no agreement violation, as alleged, and the claim will, therefore, be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January, 1969.

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