Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6765
SECOND DIVISION Docket No. 6610
2-L&N-SM-'74

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That the Louisville and Nashville Railroad Company violated the controlling Agreement, particularly Rule 87, on July 13, 1972, when they improperly assigned Carmen the duty of making metal bins, South Louisville Shops, Louisville, Kentucky.

2. That accordingly the Louisville and Nashville Railroad Company be ordered to compensate Sheet Metal Workers J. P. Stirling, G. W. Thomas and T. E. Greenwell, Sr. for twelve (12) hours each at the punitive rate of pay for such violation.

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.

In July of 1972 Carrier assigned to employes of the Carmen craft, represented by the Brotherhood of Railway Carmen of America, the work of building a metal bin at its South Louisville Shops. The Sheet Metal Workers' International Association, Petitioner herein, filed this claim on August 15, 1972 alleging that the work involved is reserved for exclusive performance by its craftsmen under Rule 87 of the controlling Agreement, the Sheet Metal Workers' Classification of Work Rule.

The Petitioner, the Carmen and Carrier, inter alios are parties to Letters of Understanding dated July 13, 1943 and August 9, 1943 and redated and revalidated October 31, 1949 and November 9, 1949. Said Letters are denominated "Appendix A" by the parties to the Controlling Agreement and read in pertinent part 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.
>
> We further agree to, and recognize that each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of any new processes, and that the introduction of a new process does not give any craft the right to claim the exclusive use of a process, or a tool in order to secure for itself work which it did not formerly perform.
>
> In the event of any disagreement between two or more crafts as to the proper application of the above rule, then the craft performing the work at the time of the change of the process or tool shall continue to do the work until the organizations involved have settled the dispute and the System Federation signatory hereto has presented such settlement to management, requested a conference and negotiated an agreement for acceptance of such settlement by management.
>
> As the duly authorized representatives of our representative organizations, we hereby request that you, on behalf of the management will accept and agree to carry out your part of the above policy to which we have agreed."

The record herein clearly establishes that this is a jurisdictional dispute wherein two crafts each are claiming the exclusive right to perform the contested work under their respective work classification rules. Just as clearly the record shows that the above quoted procedures for resolution of the jurisdictional dispute have not been invoked, let alone exhausted before invoking the processes of our Board.

We have often decided cases of the type presented herein and we can see no justification for now deviating from that clear precedent. See Awards 2931, 2936, 5789 and 5793. We cannot ignore valid and legally operative agreements entered into in good faith by the parties, notwithstanding subsequent changes in alliances and allegiances. In the instant case, such an agreement contemplates the submission of such dispute to attempted mutual resolution among the Organizations involved with conference negotiation with management for acceptance of such inter-Organizational settlement.

We find that the instant dispute is referrable properly to the resolution machinery established by Appendix A of the Agreement and is prematurely before our Board for adjudication pursuant to the provisions of Section 3, First (i) of the Railway Labor Act, as amended, and Circular No. 1 of the National Railroad Adjustment Board.

Consistent with the foregoing, we are without jurisdiction to decide this claim on its merits. Accordingly, it will be dismissed without prejudice.

A W A R D

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of September, 1974.