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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6809
SECOND DIVISION JAN 40 Docket No. 6596
G. M. YOUNG 2-SOU-CM-'75

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 21, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated the controlling Agreement when work belonging to the Carmen's Craft was assigned to the Craft of Sheet Metal Workers at Coster Shop, Knoxville, Tennessee on September 25, 1972.
2. That accordingly, the Carrier be ordered to compensate Carman L. G. Conner, Coster Shop, Knoxville, Tennessee for five (5) hours pay at the straight time rate for September 25, 1972.

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.

The instant claim arose on September 25, 1972 at Coster Shop, Knoxville, Tennessee when Carrier assigned to Sheet Metal Workers the work of installing a fabricated sheet of aluminum on the top of a fork-lift truck. It is the Carmen's contention that members of their craft have always performed the work of constructing and applying tops on fork-lift trucks, and that Carrier violated their Agreement when they assigned this work to Sheet Metal Workers. The Carmen maintain that this work is reserved to them by Rule 149, their Classification of Work Rule, and but for a brief period in 1970 when the work was improperly assigned to Sheet Metal Workers they have performed it at least for the past 15 years.

The Sheet Metal Workers have also filed an ex parte submission with this Division claiming that members of their craft have historically performed the work of applying roll guards and tops made of metal to fork-lifts. They further contend that the work is reserved to them by Rule 123, the Classification of Work Rule of their current Agreement with Carrier.

The protests of representatives of both the Carmen and Sheet Metal Workers notwithstanding, we believe a jurisdictional dispute exists between these two crafts at Carrier's Coster Shop and that said dispute must be disposed of in accordance with the Memorandum of Understanding (Disposition of Jurisdictional Disputes) agreed to by the parties on November 23, 1946.

That Memorandum provides that a jurisdictional dispute exists when and if two or more crafts claim the same work. And while both crafts deny that their claim involves a jurisdictional dispute their actions belie their contentions. Both crafts claim they have performed the disputed work in the past, that the work is reserved to their respective crafts by the Classification of Work Rules, and, in fact, both crafts maintain that they are currently performing the work at Coster Shop. Furthermore, both crafts filed an ex parte submission, and sent General Chairmen to the Second Division when Hearing was held on November 6, 1974 wherein both crafts strenuously argued their right to install tops on fork-lift trucks. It thus becomes readily apparent that a jurisdictional dispute does exist in spite of protests to the contrary.

When this occurs, the Memorandum of Understanding requires Carrier to maintain the status quo relative to which craft is doing the work, and it cannot attempt to settle the dispute "unless and until the two Local Chairmen involved or the two General Chairmen of the crafts involved make an agreement and request that the work be changed". We construe this Understanding as precluding Carrier from reassigning the disputed work unless and until the competing crafts reach an accommodation respecting which craft is entitled to the work. There is no provision contained in this Understanding that should the crafts fail to reach agreement then this Board shall settle the dispute. And we deem it beyond our jurisdiction to add such a provision to the Memorandum.

The Carmen and Sheet Metal Workers insist that the intent of the Railway Labor Act will be frustrated if we refuse to assume jurisdiction over the dispute. Conversely, said intent would also be frustrated if this Board completely disregarded a clearly written, duly negotiated Agreement entered into by the parties hereto for the orderly settlement

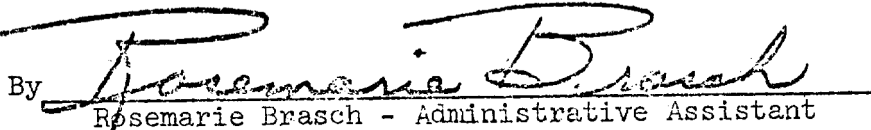
of jurisdictional disputes. If the parties no longer wish to abide by the procedure enunciated in the November 23, 1946 Memorandum of Understanding then it is incumbent upon them to rewrite said Understanding. Until such time, this Board will apply the Memorandum as written and decline to entertain jurisdiction over the jurisdictional dispute.

A W A R D

Claim dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of January, 1975.