

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( Sheet Metal Workers' International  
( Association  
(  
( Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Carrier under the current agreement, assigned other than employees of the Sheet Metal Workers' Craft (Boilermakers) to perform work covered by Rule 92, as modified by the jurisdictional settlement as agreed to by former Superintendant Motive Power W. W. Osborne on February 26, 1957, and April 10, 1957. This work assignment consisted of the removal, repair and replacement of a Tie Saw Roof of 16 Gauge Metal on two (2) Tie Saws on May 8 and 9, 1973.
2. That accordingly, the Carrier be ordered to additionally compensate Sheet Metal Workers C. W. Six, P. Panashy and A. R. Dishner in the amount of twelve (12) hours at the straight time rate, to be equally divided among them for this work.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Petitioner, SMWIA, contends that the Carrier violated Rule 92 of the Agreement, as modified by the jurisdictional settlement of February 26, 1957, when it assigned Boilermakers the job of replacing the roofs of two Tie Saw Machines. The jurisdictional settlement of 1957 sets forth the gauge of metal to be worked by each craft--13 gauge and heavier to be worked by Boilermakers and 14 gauge and lighter to be worked by Sheet Metal Workers. The roofs in question consisted of 16 gauge metal.

The Boilermakers contend that the replacement of Tie Saw Machine roofs is work specifically set forth in Rule 61, the Boilermakers' Classification of Work Rule, which we quote in pertinent part:

"Boilermakers work shall consist of . . . building, repairing, removing and applying steel cabs..."

The work involved in the instant case, the Boilermakers contend, is the replacing of the roof covering the operator of the Tie Saw Machine, which is thus work on the "cab" of the Tie Saw Machine. The Boilermakers further contend that the work of replacing cabs has historically, customarily and traditionally been performed exclusively by the Boilermakers on the Norfolk and Western Railroad.

Both the Carrier and the Boilermakers contend that this instant dispute is a jurisdictional dispute covered by Supplement No. 46 of the Agreement of all parties to this dispute. Supplement No. 46 reads in pertinent part:

"2. The employees, on their part, agree that when a dispute arises between employees of two or more crafts, parties hereto, as to their rights to perform specific work, such dispute will not be presented to the carrier or its officers but, instead, agreement will be reached between such employees as to their opinion of the proper performance of such work....

"3(a). The carrier, on its part, agrees that when a dispute arises between employees of two or more crafts, parties hereto, as to their rights to perform specific work no change will be made in the crafts performing such work pending final settlement as provided in this agreement.

"4. If the carrier and its employees are unable to agree on disposition of the matter at issue in the manner provided in Item 2, the question may then be handled in the usual manner up to the highest officer designated by the carrier to consider such matters. In event no agreement is reached between the employees and such officers the matter may be further handled as provided by the Railway Labor Act, as amended.

We find that a jurisdictional dispute exists in the instant case. The fact that the jurisdictional settlement resulting in the gauge of metal agreement was reached in 1957 does not take the instant dispute over the replacing of Tie Saw Machine roofs out of the category of a jurisdictional dispute, whereby the dispute is first referable to

settlement on the property by the two crafts involved. Certainly the petitioning Organization's position is based on the jurisdictional settlement of 1957. However, the Boilermakers claim exclusive right to perform such work under an Agreement rule and past practice. The situation before this Board then is that two organizations are claiming the exclusive right to perform the installation of Tie Saw Machine roofs. Both the Sheet Metal Workers and the Boilermakers agreed with the Carrier in Supplemental No. 46, Item 2, that when such a situation exists, the parties would first pursue settlement on the property between the two organizations. Supp. No. 46 contains no exceptions to this requirement and we have no power to alter this Agreement.

We find that the petitioning Organization has not complied with the requirements of Supp. No. 46. The claim thus is prematurely before us. We have no alternative then but to dismiss the claim.

A W A R D

Claim dismissed.

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 30th day of May, 1975.