Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7218
SECOND DIVISION Docket No. 7065-T
2-SPT-MA-'77

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Southern Pacific Transportation Company

Dispute: Claim of Employes:

1. That the Carrier violated Rule 57 and Memorandum "A" of the current controlling Agreement effective April 16, 1942, (revised April 19, 1957) when it assigned the operation of a Freight Master Center Plate Refinisher machine to employes of the Carmens' Craft.

2. That the Carrier be ordered to assign the operation of the Freight Master Center Plate Refinisher machine to employes of the Machinist Craft.

3. That the Carrier be ordered to allow claim for eight (8) hours additional compensation for each date and for each Freight Master Center Plate Refinisher machine operated by employes of the Carmens' craft commencing on September 22, 1974, said claim to be in behalf of Machinists W. M. Vaughn, F. D. Turk, P. J. Guzman, J. Monahan, E. H. Kizer, J. R. Johns, and W. H. Coles, hereinafter referred to as Claimants), to be divided equally among them.

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.

For many years prior to August, 1974, employes of the Carmen's classification were allocated the work of repair and maintenance of freight cars, which included repair work on worn body center plates and truck bolster bowls. During August, 1974, Carrier placed a Freight Master Center Plate Refinisher System into operation at the Sacramento Car Heavy Maintenance Plant. For the reason that the involved machine is for the purpose of effecting repairs and maintenance of freight cars, the operation of this

machine was allocated to employes of the Carmen's classification. Claim was filed by Claimants (Machinists) claiming this work for the reason that the "precision" machine was being used and that Machinists had exclusive right to operate this machine and, therefore, to perform the involved work. As this Claim progressed, a third party notice was issued to the Organization representing the Carmen. This Organization (Carmen) have responded and have claimed this work because of past practice on the property. The Machinists contend that allocation of the involved work is a violation of Rules 33 (a), 57 and Memorandum "A" of the current agreement. Both Carrier and the third party Carmen's Organization contend that this Board has no jurisdiction in this matter for the reason that the provisions of Memorandum "A" has not been complied with by the parties and that this Appeal to this Board is premature, and that, therefore, this Claim should be dismissed because of such non-compliance with Memorandum "A". Claimants' Organization relies upon Award No. 6774 of this Division in support of this Claim.

This Board finds that this is a jurisdictional dispute; that the parties did, on April 17, 1942, in Memorandum "A", agree to a procedure for resolving disputes of the nature of the instant dispute; and that the procedure agreed upon in the said Memorandum "A" has not been fully complied with. This Board further finds that Award No. 6774 is in palpable error for the reason that because of the good faith agreement, referred to as Memorandum Agreement "A", the signatory Organizations to said agreement must exhaust the clear, mandatory provisions of said Memorandum "A" before a Claim may be filed. Said Memorandum "A" made it mandatory on the signatory parties that existing practices will be continued, unless, and until, otherwise decided by conference and negotiation between the General Chairman involved, and the General Superintendent of Motive Power. No such conference or negotiation was held and no agreement consumated between the parties involved in this action in accordance with said Memorandum "A". (See Second Division Award Nos. 6759, 6763, 6809, 6864 and 6872. Also see Third Division Awards which refused to adjudicate claims where the parties had agreed to submit them to other Boards or committees, such as Award Nos. 4780, 4793, 6336, 19295, 19296 and many others). Therefore, until such time as the requirements of the above referred to Memorandum "A" have been fulfilled by the parties, this Board has no jurisdiction in the instant dispute. The requirements of the Railway Labor Act must be complied with. (See Second Division Award Nos. 6416, 6764, 2931, 6783, 6763, 6864 and 6872, among others). The overwhelming authority represented by Awards of this Division as well as Third Division, are contrary to Award No. 6774, upon which the Organization is dependent in support of their position.

Therefore, this Claim will be dismissed without prejudice.

A W A R D

Claim dismissed without prejudice.

Award No. 7218
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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 25th day of January, 1977.

LABOR MEMBER'S DISSENT TO

AWARD NO. 7218, DOCKET NO. 7065-T

The majority in Award No. 7218 has reached a conclusion not squaring with the facts of record, the applicable Agreement provisions and proper precedent Awards of this Division.

In the erroneous finding that this was a jurisdictional dispute the majority attempted to justify its decision by an erroneous interpretation of Memorandum Agreement "A" by stating in pertinent part:

> "Xxx the signatory Organizations to said Agreement must exhaust the clear, mandatory provisions of said memorandum "A" before a claim may be filed. Said memorandum "A" made it mandatory on the signatory parties that existing practices will be continued, unless and until, otherwise decided by conference and negotiation between the General Chairman involved, and the General Superintendent of motive power." (underscoring supplied)

This neutral completely ignored the facts of record that irrefutably prove that the Machinists always before performed machining of this work item when needed while the Carmen only utilized the hand tools as needed in performing minor repairs. The Carrier then purchased a portable machine and assigned it to the Carmen in direct violation of the above underscored quoted portion. The portability of a machine by no stretch of the imagination removed it from the unambigious language of the Machinist classification of Work Rule 57 for assignment to the Carmen Craft where such machining is not included in their work classification rule.

This portrays deliberate misassignment of work by the Carrier in violation of both memorandum Agreement "A" and Rule 57. The neutral becomes a party to this mischief in not so holding and thereby gives comfort to such jurisdictional machinations so rampant before this Division. The neutral further ignored other cited Awards that correctly hold that such misassignment cannot be considered as jurisdictional disputes. Second Division Award No. 7200 correctly so held as:

> "Examination of the record shows that no jurisdictional dispute, in the common use of the term, exists in this matter. 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. As examples, see Awards Nos. 4547 (Williams), 4725 (Johnson), 5726 (Dorsey) and 6762 (Eischen)."

Such correct findings go back for many years in this Division such as portrayed in Second Division Award No. 2315 in pertinent part"

> "Carrier also objects to this Division assuming jurisdiction of the dispute on the grounds that there are other employes represented by the Brotherhood of Maintenance of Way Employes involved in this

> dispute to whom notice has to be given within the meaning of Section 3, First (j), of the Railway Labor Act. If such notice were served it would serve no useful purpose for this Division does not have jurisdiction to pass upon the question of whether or not employes represented by the Brotherhood of Maintenance of Way Employes have a right thereto under the provisions of their agreement with the carrier. That question can only be determined by the Division of the National Railroad Adjustment Board having jurisdiction of disputes involving employes which that organization represents. We find this contention to be without merit."

That neutral then went on to hold that the Machinist class of work rule specifically covered that work whereas the other parties' did not and therefore no jurisdictional question could be involved.

The majority in this instance, by dismissing the claim, is denying our adjudication rights before the National Railroad Adjustment Board which was designed "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." See Title I-Section 2, General purposes (5) of the Railway Labor Act.

Award No. 7218 is, therefore, erroneous and without value as precedent and to which this vigorous dissent is directed.

G. R. DeHague
Labor Member