Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8269
Docket No. 8075-T
2-SCL-MA-'80

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: International Association of Machinists and Aerospace Workers

Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That the Carrier violated the controlling Agreement on May 4, 1977, when it assigned Electricians at Uceta Shops, Tampa, Florida to perform work coming under Machinists Classification of Work Rules, on Diesel Locomotive Number 1771.

2. That accordingly, the Carrier be ordered to compensate Machinists A. Trebisovsky and R. E. Johnson in the amount of four (4) hours each at pro-rata rate in connection with claim filed in their behalf.

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.

This case involves a claim by the Machinists' Organization that Carrier wrongfully assigned Electricians to remove and inspect the mechanical spleen drive shaft on Locomotive No. 1771 at Carrier's Uceta Shops, Tampa, Florida; specifically, that electricians removed 4 axle generators, checked the spline drive shaft and reapplied it to the unit. The occasion for the assignment was to determine the cause of wheel slippage on the locomotive.

The Organization claims a violation of Rules 26(a), which reserves mechanics' work to mechanics or apprentices and Rule 51, the Machinists' Classification of Work Rule. Essentially, Petitioner asserts: (1) that Machinists historically did the work at issue and that when electricians found no electrical malfunction, machinists should have been assigned to check the mechanical equipment to determine if mechanical malfunction was causing the wheel slip trouble; and (2) that removing and applying the axle generators or alternators to check the spline drive shaft constituted the basic assignment and not incidental work and, therefore, the "incidental work rule" was not applicable.

Carrier maintains that electricians historically are assigned to trouble shoot to correct Wheel-slip indication and that in the instant case, to require electricians to locate the cause of the wheel-slip trouble and remove and reapply alternators in doing so was proper, inasmuch as this was an electrical problem. The specific work in dispute, Carrier holds, was incidental to the main assignment and, therefore, could be performed by electricians, especially in view of the fact that the Uceta Shop is a running repair point. Carrier adds that no repairs or adjustments were made to the alternators (unlike the situation in a prior claim) and that the total time involved in checking the alternators did not exceed 30 minutes of the approximately two hours' assignment to locate the wheel slip trouble. Further, Carrier points out that the Machinists' Classification of Work Rule 51 makes no reference to generators or alternators.

The Electricians' Organization, as interested third party, was notified of the dispute and submitted a statement for the record, claiming, among other assertions, that the work at issue was within the exclusive jurisdiction of electricians under its Classification of Work Rule.

Petitioner did not refute Carrier's position that the Uceta Shops at Tampa are a running repair point to which the Incidental Work Rule (Article III of the National Agreement of December 4, 1969) applies. The record discloses no request was made by Petitioner for timing the disputed work, pursuant to the following provision of Article III:

> "If there is a dispute as to whether or not work comprises a 'preponderant part' of a work assignment the Carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work."

Carrier's contention that electricians performed no overhaul, repair, modification or otherwise improsed the axle generator was not rebutted nor refuted by Petitioner; hence, this case is distinguishable from a prior case cited by Petitioner.

Although Petitioner questioned Carrier's estimate of 30 minutes to check the alternators, it offered no probative evidence to negate Carrier's estimate.

The record also discloses that in connection with the merger of the former Atlantic Coast Line and the Seaboard Air Line Railroads, the shop crafts on December 20, 1967 agreed to settle among themselves conflicts or disputes "regarding specific items of work in the classification of work rules of the new agreement". A reading of the record discloses no such attempts at resolution of the dispute on the property.

The provisions of the Incidental Work Rule were not utilized on the property. The procedures of the December 20, 1967 agreement entered into by the various crafts for the settlement of work jurisdiction disputes have not been complied with. In our judgment, this case is improperly before this Board, and we shall 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 19th day of March, 1980.

LABOR MEMBER'S DISSENT TO

AWARD NO. 8269, DOCKET NO. 8075-T

The majority in Award No. 8269 has reached a conclusion not squaring with the facts of record and the applicable agreement provisions.

In the erroneous finding that petitioner did not request timing the disputed work, pursuant to Article III of the National Agreement of December 4, 1969, (incidental work rule) the netural completely ignored the facts of record which irrefutably prove that the removal and application of the axel generators or alternators to check the spline drive shaft constituted the basic assignment, therefore, the "incidental work rule" was not applicable.

The neutral then went on to hold that the procedures of the December 20, 1967 Agreement for the settlement of jurisdictional disputes was not complied with. Such misassignment as in this dispute cannot be considered as a jurisdictional dispute. 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 do not refer specically to the work in question. Employees Exhibit "B-4" a prior case cited by the Employes, the Carrier responded in part:

> "In as much as the work performed by the electrician - the removal and application of the axel generator and gasket - is not, in this particular claim, considered "incidental" as contemplated by the Incidental Work Rule,

we will allow Mr. Saylor one (1) hour at the pro rata rate of pay in full and final settlement thereof, as agreed in conference."

The foregoing rules out both the "incidental and jurisdictional" issue.

By dismissing this claim the majority is denying adjudication rights before the Board, therefore, requires a dissent.

Award No. 8269 is erroneous and without value as precedent.

R. A. Westbrook

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Labor Member