

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

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

Dispute: Claim of Employees:

1. That the Louisville and Nashville Railroad Company violated the controlling Agreement, particularly Rules 86 and 87 at the Radnor Diesel Shops, Radnor, Tennessee on June 7, 7, 8, 9, 10, 10, 9, 15, 13, 19, 16, 27, 29, 30, 30, 16, and 13, and July 1, 1977 when they improperly assigned Electricians Buckanan, Ellis, Barnes, Joe Tripp, Horner, Holt, Thompson, Smith, Hall, Jackson, Prince and Walker the duties of removing and replacing sheet metal covers on Engines 4044, 4015, 416, 4050, 5021, 543, 1062, 466, 4095, 4109, 4131, 3026, 532 and 4040, also removed top cover Diesel Generator Power Car Wrecker, replaced side panel on Electric welder in Roundhouse at Shop, Radnor, Tennessee.
2. That accordingly the Louisville and Nashville Railroad Company be ordered to compensate the first eighteen (18) men on the Sheet Metal Workers' overtime board, Two (2) hours and forty (40) minutes each at the punitive rate of pay for such violations.

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.

Petitioner charges a violation of Classification of Work Rule 87 of the controlling agreement in that Carrier assigned members of the electricians' craft to remove and replace "sheet metal covers on Engines ..., also removed top cover Diesel Generator Power Car Wrecker, replaced side panel on Electric welder in Roundhouse at Shop, Radnor, Tennessee". The relevant language of Rule 87 states:

"Sheetmetal workers' work shall consist of tinning, ...
in shops, yards, buildings; the ... erecting, ... installing,
dismantling ... parts made of sheet ... metal ... of 10 gauge
or lighter ..."

The Electricians' Organization was given a third party notice that this dispute was pending before this Board, and filed a submission and was represented at the hearing of this case.

We are called upon to resolve two procedural issues before turning to the merits of the claim.

The first question to be resolved is the admissibility of certain exhibits filed by both the Sheet Metal Workers and the International Brotherhood of Electrical Workers. These exhibits consist of statements by individual sheet metal workers and electricians relating to the performance of the disputed work. Both Organizations contest these exhibits as untimely presented. Carrier also contests our consideration of such statements submitted by Petitioner in its Rebuttal to the Electricians' Organization on the ground that these statements were dated subsequent to the filing of this dispute before this Board. We hold that the evidence (statements) submitted by both Organizations was not presented during the progress of the claim on the property and that their submission was untimely. We shall not, therefore, give these statements any consideration in determining the merits of this case.

The second procedural issue is the admissibility of Carrier's Exhibit LL, a letter dated October 23, 1978 from Carrier's Labor Relations Director to Petitioner's General Chairman. Exhibit LL refers to the "incidental work rule".

We are urged to give no consideration to this Exhibit (and accompanying documents relating to the Incidental Work Rule) because it was not timely submitted during the handling of the dispute on the property. The argument against admission of Exhibit LL is that a Notice of Intent to file an Ex Parte Submission was filed by Petitioner on October 23 -- the same date as the letter (Exhibit LL) written by Carrier's Labor Relations Director. Consequently, the argument against its admission runs, the Incidental Work Rule was not raised by Carrier during the processing of the claim on the property.

We cannot support this line of reasoning. Petitioner's argument on this point ignores the fact that the Labor Relations Director's October 23 letter was in reply to a letter addressed to him on October 18 by Petitioner's General Chairman; that the General Chairman's October 18 letter was in further pursuance and progression of the claim on the property and was written in response to Carrier's denial letters of June 22 and August 31, respectively.

Furthermore, Petitioner's October 23 Notice of Intent to file an Ex Parte Submission was time stamped by the Board's Second Division on October 24, on which date the Board sent Carrier a copy of the October 23 Notice of Intent. Until Carrier received the Board's October 24 letter, to which was attached Petitioner's October 23 Notice of Intent, it was unaware of Petitioner's intention to discontinue its efforts to resolve the dispute by further discussion and handling directly by the parties on the property. Thus, the Labor Relations Director's letter of declination of October 23, written in response to Petitioner's October 18 letter, was written when Carrier was still unaware that Petitioner proposed to transfer the handling of the case to this Board. As of October 23, Carrier had no reason to doubt that Petitioner was still handling the dispute in the usual manner by

continuing discussions and appeals on the property. In our judgment, Carrier's Exhibit LL (and accompanying documents) dated October 23, 1978 was timely submitted and is, therefore, admissible.

However, our decision in this case does not rest upon the admissibility of evidence relating to the Incidental Work Rule.

Since both the Sheet Metal Workers and the Electrical Workers' Organizations are claiming exclusive right to perform the work subject of this dispute, we conclude that a jurisdictional dispute exists herein. Consequently, we conclude that the Board has no jurisdiction to render a decision on the merits of the claim.

The controlling Agreement contains a memorandum (letter) of agreement covering the handling of jurisdictional disputes among the various crafts. Petitioner is a signatory party to the letter of agreement dated October 31, 1949 appearing in Appendix A of the relevant agreement. That agreement mandates that when two Organizations signatory thereto claim the right to perform work, they shall reach an agreement and settle any dispute that exists between them relative to the disputed work before any claim can be submitted to the Carrier.

The record shows that the mandated settlement procedures in Appendix A have not been exhausted before invoking the processes of our Board. There is, in fact, a question as to whether the mandated settlement procedures have been invoked.

This Board has, in prior disputes involving the same parties herein, ruled (Awards 6765 and 6825) that Appendix A must be complied with. Award 6765 (Eischen) stated:

"... 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 referable 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."

We concur in the opinion cited in Award 6765 and, accordingly, we will dismiss the claim.

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Award No. 8271
Docket No. 8113-T
2-L&N-SM-'80

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.