Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8283
SECOND DIVISION Docket No. 7956-T
2-C&O-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
(Chesapeake and Ohio Railway Company

Dispute: Claim of Employes:

1. That the Chesapeake and Ohio Railway Company violated the controlling Agreement by assigning other than employes of the Machinist Craft to perform work which accrues exclusively to the Machinist Craft by rule and practice.

2. Accordingly, Machinists Talton Webb, Robert Hayes, James Swindell, Arch Worly, Herman Young, Frank Dickson, Willis Cochum, Ray Worthington, Paul Burley, Russell Rase, Columbus Dixon, Oscar Kazee, Jack Grayson, Robert Large, Chester Grayson, Arnold Murray, Charles Trusdell, Freemont Broughman, Richard Akers, Ralph Royster, Bobby Logan, Chester Kibbey, Paul Hennecke, Stephen Wilmoth, John Stephens, Charles Mazzone, Jennings Nelson, Paul Freeman, James Stanley, Dennis French, Charles Ellison, Joel Baisden, Henry Collins, Alvin Harmin, James Barber, Larry Carrico, Ed Anderson, Garry Jenkins, Roe Bryan, Ervin Duncan, Norman Fraley, Willard Nunley, Glenn Madden, Billy Jamison, Arnold Dummitt, George Nolan, Larry Craft, Willie Tolliver, Glenn Watson, Ron Adams, William Boggs, and William Malone and Machinist Helpers Roy Clark, James Carter, Henry Schmidt, James Boyles, Charles Heck, Willis Knipp, Paul Maynard, Robert Cremeans, Mike Carter, Denver Whitt, Jackie Fray, James Keaton, Amos Geerhart, Paul Quals, Ray Breene, Lewis Justice, Alva Markwell, Ed Compton, Howard Davis, Steve Lawless, Jerry Howard, Don Wolfe, Charles Neal, Ron Davis, Clyde Smith, Gene Horn, Ron Jacobs, Michael Hammond, Dwight Sizemore, James Shank, Gregg Boggs, Michael Smith, David Frye, Michael Moore, Paul Hutchinson, Daniel Lewis, Randy Brown, Carl Billups, Randy Anderson, Terry Breech, and Randall Miller should be compensated twenty eight (28) hours' pay each at the applicable rate of pay.

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 dispute involves a claim by Petitioner (Machinists) arising from Carrier's use of Carmen and Blacksmiths on or about January 27, 1977 to construct a frame at Carrier's Raceland (Ky.) Car Shop for use in breaking frozen coal in hopper cars. Petitioner alleges violation of the Machinists' Classification of Work Rule 62(a).

The record discloses that in January 1977, Carrier utilized carmen and blacksmiths to construct a probe device designed to be lowered into a hopper car and break up the coal by penetration. The device initially consisted of an I-beam frame on which were welded varying lengths of pointed round bar stock with air vibrators attached to the frame by the Machinists' Craft. When this proved unsuccessful, carmen and blacksmiths were used to replace the round bar stock with approximately 60 six-inch I-beams of varying lengths, welded at a right angle to the frame. Air vibrators used to vibrate the frame proving unsuccessful, Machinists were used to replace the air vibrators with Robins Car Shakers.

The Machinists' initial claim, filed February 14, 1977, stated that the addition of the vibrators converted the "purging structure" to a coal shaker and that the Machinists' Craft had historically performed all work on shakers. In subsequent stages of the processing of the claim, it was contended that the probe was a "machine tool" and hence within the Machinist Classification of Work Rule 62; and that it was a "car shaking machine", repairs to which had been performed in the past by Machinists at Raceland.

Carrier maintained that the probe is not a pneumatic or hydraulic tool or shop machinery as set forth in Rule 62 and there was no machinists' work in connection with the actual construction of the frame. Further, it argued that construction of the I-beam probe was new or experimental work which had never previously been performed and that, therefore, the assignment of such work was at its discretion. Carrier added that no claim was filed by Petitioner when Carmen and Blacksmiths constructed the I-beam frame, and that it was only after machinists installed the shaking devices (air vibrators) they claimed the exclusive right to replace the round bar stock with I-beams.

The record discloses that the Blacksmiths' and Carmen's Organizations were duly notified of the pendency of the instant case and filed submissions in connection therewith.

Carrier, in its submission to this Board, contends this is a jurisdictional dispute and that the Machinists have not complied with the applicable Agreement provisions dealing with craft jurisdictional disputes. Accordingly, Carrier requests that we dismiss the claim. Petitioner, on the other hand, urges us to reject this argument on the ground that the jurisdictional issue was never raised on the property.

The controlling agreement (Supplement No. 6) provides in pertinent part as follows:

> "... in the event of a jurisdictional dispute between crafts, that this dispute must be taken up between the crafts involved before such dispute is handled with Management."

Our reading of the record leads to the conclusion that the equipment at issue was new (or experimental), no similar equipment having been built at the Raceland Car Shop or at any other Carrier facility. Hence, we are of the opinion that the conflicting claims among the various crafts in the situation hereinabove described give rise to a jurisdictional dispute, with each craft claiming the exclusive right to perform the disputed work under its respective work classification rule. The record shows no evidence that Carrier unilaterally changed an established assignment of work.

Carrier, as noted, in its Ex Parte Submission raised for the first time the allegation that Petitioner has not complied with Supplement No. 6 to the controlling agreement dealing with the settlement of jurisdictional disputes, thereby raising a question as to the Board's assumption of jurisdiction over this case. As to whether Carrier's argument on this point is barred because it was not raised on the property, this Board has held in a number of Awards that the question of jurisdiction may be raised by either party at any time. Second Division Award 5938 (Dugan) stated:

> "The Organization in its rebuttal to Carrier's submission, contends that at no time during the handling of this claim on the property did the Carrier ever question the procedural handling of this claim, and that thus being a new issue, it cannot be considered by this Board. With this contention we do not agree. This Board has consistently held that a question as to the Board's jurisdiction may be raised at any time in the proceedings. See Third Division Award 16786."

(See also Third Division Awards 18577 (Ritter), 8886 (McMahon), 12223 (Dolnick) and others.)

This Board has on its own motion declined jurisdiction, when warranted, even though no party raised the issue during the handling on the property (Second Division Award No. 6003 (Gilden)). To the same effect, the Board in Third Division Award No. 16786 (Zumas) held:

> "While the record indicates that the question of jurisdiction was not raised on the property, such failure to object is irrelevant. Jurisdictional conditions are absolute under the Act, cannot be waived, and can always be considered at any time in the proceedings. See Awards 8886, 9578, and 10315."

Inasmuch as Supplement No. 6 to the Agreement is applicable to the instant dispute, the procedures therein prescribed must be followed before this Board may consider the case. This Board may not properly ignore valid and legally binding agreements entered into in good faith by the parties. The requirements of Supplement No. 6 to the Agreement have not been complied with; its provisions have not been invoked. There is no record of any conference or negotiations held among the crafts involved in this case nor any indication of any agreement reached under Supplement No. 6 regarding the conflicting jurisdictional claims before us. Accordingly, we hold that this case is prematurely presented to this Board for adjudication and we have no jurisdiction to hear and decide the merits of the case. We have no alternative but to dismiss the claim.

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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 26th day of March, 1980.