Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11038
Docket No. 10579-T
2-B&M-CM-'86

The Second Division consisted of the regular members and in addition Referee Elloitt H. Goldstein when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
( and Canada
(
(The Boston and Maine Corp.

Dispute: Claim of Employes:

1. That the Boston and Maine Corp. violated the terms of the current controlling agreement; specifically, Rules 26 and 109, at the Boston Engine Terminal, commencing on March 26, 1982, when Carmen's work was improperly assigned to employes other than Carmen.

2. That accordingly, the Boston and Maine Corp. be ordered to additionally compensate the Claimants listed in Employes' Exhibit "G" covering the period 3/26/82 to 6/17/82, and Employes' Exhibit "M" covering the period 6/18/82 to 8/19/82, for the number of hours specified and for each subsequent date until this continuing violation is resolved.

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 employes 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.

At issue is whether members of the Organization, (the Carmen) or the International Association of Machinists and Aerospace Workers (the Machinists) are entitled to remove, repair and replace truck mounted tread unit brake cylinders and slack adjusters on passenger cars in Carrier's service at the Boston Engine Terminal, Boston Massachusetts which work was formerly performed at the Carrier's Billerica, Massachusetts shop facility. The Carrier has posted and assigned that work at the Boston Engine Terminal to the Machinists

and the Carmen have claimed such assignment violates Rules 26 and 109 of their Agreement with the Carrier. Claims were filed by the affected Carmen for lost time during dates in March through June, 1982. Subsequent Claims were filed by other affected Carmen covering the period June through August, 1982. The Carrier agreed to hold future Claims in abeyance pending disposition of the pilot case with the understanding that Claims must continue to be filed and handled at the local level.

The dispute had its beginning in 1980 when the Carrier notified the Carmen that it was going to assign the disputed air brake work on certain passenger coaches to employees other than Carmen at the Boston Engine Terminal or would contract out the same to Amtrak, New Haven, Connecticut. On March 26, 1982, the Carrier installed an air brake room and test facilities at the Boston Engine Terminal. Prior to the performing the disputed air brake work at the Boston Engine Terminal, that work was performed at the Carrier's shop facility at Billerica, Massachusetts. Historically, the disputed brake work was performed by Machinists at the Billerica facility. The jobs for the disputed air brake work at the Boston Engine Terminal were posted and assigned to the Machinists rather than to the Carmen.

The Carmen assert that the work in question was "new" work and that Rules 26 and 109 of the current Agreement have been violated. The Carmen also claim a violation of the February 13, 1958, Miami Agreement. Further, the Carmen rely upon Award No. 2, Public Law Board No. 2728.

The Carrier asserts that in accord with the September 25, 1964 Shop Crafts National Agreement, the Carrier was obligated to notify the Machinists of its intent to transfer the work from Billerica to Boston and that ultimately, in accord with the Shop Crafts National Agreement, the Machinists who performed the air brake work at Billerica were permitted to follow their work to Boston. The Carrier claims that it serves as contractor to operate commuter rail service for the Massachusetts Bay Transportation Authority (MBTA) and is obligated to comply with changes requested by the MBTA. According to the Carrier, the MBTA requested a division of the air brake work in order to effect actual rather than proportioned costs involving passenger and freight air brake service and that the MBTA desired that functional air brake systems be made available at the point of usage rather than at an off-line back shop such as the shop at Billerica. Thus, according to the Carrier, the decision was made to transfer the air brake work from Billerica to Boston Engine Terminal for passenger service and East Deerfield, Massachusetts for freight service. Further, according the Carrier, the "Miami Agreement" is not binding upon it because that Agreement was only between certain Organizations and that Agreement was never formally submitted, negotiated nor formalized with this Carrier. Finally, the Carrier asserts that the work in question was not "new" and that the decision in Award No. 2, Public Law Board No. 2728 has no relationship to the instant dispute which involves a transfer of work from one facility to another facility.

The Machinists have filed a Third Party submission basically supporting the Carrier's position.

Upon careful review of the record before us in this case, we find the Carmen's arguments to be lacking in merit.

First, it is undisputed that prior to the movement of work from Billerica to Boston Terminal, the disputed work was performed by the Machinists at Billerica. Close examination of this record shows that the disputed brake work was not "new" as urged by the Carmen, but was a "transfer of work" within the meaning of Article I, Section 2 of the 1964 Shop Crafts Agreement which was signed, amongst many, by the Carrier, the Carmen and the Machinists. Under the terms of the Shop Crafts Agreement, the Carrier was obligated to give notice to the Machinists of the change in operations concerning the transfer of work from Billerica to Boston Terminal, see Section 4. The Carrier asserts that as a result of the transfer of work, certain Machinists at Billerica were permitted to follow their work to Boston Terminal, see Section 11. Thus, the Carrier followed the terms of the 1964 Shop Crafts Agreement by making the disputed assignments at Boston Terminal to the Machinists rather than to the Carmen.

Second, in light of our finding that the transferred work in question was properly assigned to the Machinists in conformity with the 1964 Shop Crafts Agreement, it follows that the disputed work did not, in the circumstances of this case, belong to the Carmen. Hence, the provisions of Rules 26 ("None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft") and 109 ("Carmen's work shall consist of building, maintaining, stripping of repairs, painting, upholstering and inspecting all passenger and freight cars") of the Carmen's Controlling Agreement do not apply in this case.

Third, Award No. 2, Public Law Board No. 2728 is not dispositive of this case. That case involved the issue of whether or not the car in question which was leased by the MBTA from the Toronto Area Transit Operating Authority was a locomotive (thereby requiring Machinists to perform the disputed brake work) or a passenger car (thereby giving jurisdiction to the Carmen). It was found in that case that the coach was a passenger car thus giving the Carmen jurisdiction over the work even though the car contained control stands enabling the engineer to operate the train consist from the head-end of the consist although the propulsion was situated in the rear-end of the train consist. However, that case did not, as here, involve the transfer of work from one facility to another, which transfer was governed by the 1964 Shop Crafts Agreement.

Fourth, with respect to the assertion that the 1958 Miami Agreement has been violated by the Carrier, we find that notwithstanding the substantive provisions contained in that Agreement, there is insufficient evidence in this record to permit us to hold that the 1958 Miami Agreement was binding upon the Carrier concerning the facts giving rise to this case. There is no evidence in this record to show that the 1958 Miami Agreement was negotiated, signed,

or otherwise adopted by the Carrier insofar as the dispute in this case is concerned.

Therefore, based upon this record, the Claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 15th day of October 1986.