

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11964
Docket No. 11567-T
90-2-88-2-31

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(Northeast Illinois Regional Commuter Railroad Corporation

STATEMENT OF CLAIM:

The Northeast Illinois Railroad Corporation, now known as METRA, hereinafter referred to as the Carrier, violated the provisions of the current and controlling agreement, in particular Rules 77 and 32(a), when they improperly assigned other than Sheet Metal Workers the disconnecting and connecting of the water pipes to the water pump on locomotive engine numbered 116 on the date of April 22, 1987.

THAT ACCORDINGLY THE CARRIER BE ORDERED TO:

Compensate Sheet Metal Worker C. J. Early in the amount of two hours pay at the pro rata rate for the above violation.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

A Claim was filed by the Local Chairman on April 30, 1987 on grounds that the Carrier was in violation of the current Agreement when it assigned Machinists to do work belonging to Sheet Metal Workers. The work in question consisted in removing a defective right bank engine water pump and replacing it on Carrier's Engine No. 116 on April 22, 1987. Relief requested was two hours' pay at pro rata rate. Absent resolution of the dispute it was docketed before the Second Division of the Board for final adjudication. Since there

was a Third Party involved in the Claim the Board sent notice to the International Association of Machinists and Aerospace Workers in accordance with Section 3, First (j) of the Act. The Board advised the International Association of Machinists of its privilege to forward a Submission which would become part of the record of this case. The General Chairman of District 19 of the International Association of Machinists sent a Third-Party Submission to the Board. This was responded to by rebuttal statement by the General Chairman of the Sheet Metal Workers International Association who handles claims on this property.

After having studied the full record before it the Board has concluded that it must resolve a procedural issue as a preliminary matter. First of all, the instant Claim involves a jurisdictional dispute. Secondly, the International Association of Machinists argues in its Third-Party Submission that procedural disputes are to be resolved by provisions found in the Jurisdictional Dispute Agreement of April 8, 1948 of the former Milwaukee Road, which was "preserved by the Agreement of September 2, 1982." The 1948 Agreement was signed by both the Sheet Metal Workers International Association and the International Association of Machinists, as well as by representatives for the Boilermakers, the Blacksmiths, the Electrical Workers and the Carmen. Although some of the Organizations signatory to that Agreement have since either merged with each other and/or merged with some other Labor Organization that, in itself, has no direct bearing on the instant jurisdictional issue. The language of the applicable Agreement states the following:

"It is agreed that in connection with the Schedule Agreements which become effective September 1st, 1949, the following Memorandum of Agreement dated April 8th, 1948 will continue in effect without change:

'In connection with and supplementary to the classification of work rules of each craft, represented by the parties signatory hereto, effective June 1st, 1948, it is agreed, as indicated in letter dated June 22nd, 1945, written by the Shop Crafts' General Chairman to Mr. F. H. Allard. . .'

that each craft, represented by the parties signatory hereto, will continue to perform each item of work they have been performing under the Agreement of December 15th, 1926 and any claim made by another craft for any item of work will be handled between the two crafts. If an agreement is reached between the two crafts, such agreement will be submitted to the Chief Mechanical Officer, or his representative. It is understood that no work will be transferred from one craft to another until the procedure outlined above has been followed and Management has agreed to accept any agreement that may be made between the two crafts with regard to transfer of work from one to the other."

The Sheet Metal Worker International Association's representative questions, in his rebuttal to the International Association of Machinists' Third-Party Submission, why the International Association of Machinists never brought up such Memorandum of Agreement before in the "forty years since the Agreement was signed" and offers such as the reason, in his estimation, as well as the fact that Federation 76 no longer exists, that this Memorandum is "no longer applicable." A survey of 'precedent coming from this Board warrants the conclusion, however, that the Memorandum is still in effect. In Second Division Award 11688, and in more recent Award 11837, the Board dealt with claims involving jurisdictional disputes on this property between the moving Organization to this case and the Carmen. In Award 11688 the Board, while admitting the presence of such dispute, ruled nevertheless on merits. This conclusion was reversed by Award 11837 on grounds that the earlier Award, while recognizing that a "jurisdictional dispute" was at stake, left the issue "dangling." Award 11837 concluded, therefore, that the Claim to that case was in procedural error because the provisions of the 1984 Jurisdictional Dispute Agreement had not been followed and the Claim was dismissed. In this respect, Award 11837 cites earlier Award 11657 to the effect that:

"Under the Railway Labor Act this Board's jurisdiction is limited and it cannot consider issues over which it lacks appropriate jurisdiction...."

The Labor Members issued Dissent to Award 11837 on grounds that it violated "stare decisis" doctrine by not following Second Division Award 11688. The Board does not find argumentation contained in this Dissent to be persuasive, and it believes that Second Division Award 11837 is correct when it stated:

"...when a jurisdictional issue is recognized in the Award we are asked to follow...exceptions (to stare decisis)...must obtain because we may not have jurisdiction to get to the merits of the matter in the first place."

Further, there has been no showing before the Board that the Jurisdictional Agreement of 1948 is still not applicable to the Sheet Metal Workers International Association and the International Association of Machinists. This Board has already recognized that this Agreement is applicable to the Sheet Metal Workers International Association and the Carmen. The General Chairman of the Sheet Metal Workers International Association's argument that the International Association of Machinists had never invoked this Agreement does not mean that the latter did not have the right to do so.

In their Third-Party Submission the International Association of Machinists state the following to the Board:

"Be advised in this instant case the General Chairman of the Machinists has to this point in time received no communication either oral or written from the Sheet Metal Workers' organization regarding this matter. Accordingly, the Machinists respectfully request that this case be dismissed."


In view of the language of the 1948 Memorandum of Agreement this request by the International Association of Machinists must be honored. Since such is so the Board cannot properly address the merits of the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1990.