Award No. 1524
Docket No. 1349
2-SP(T&NO)-MA-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA (Texas & New Orleans Railroad Company)

DISPUTE: CLAIM OF EMPLOYES: 1—That lathe work at the Houston Maintenance of Way Shop performed by the machinists in connection with the maintenance of signal equipment was transferred from them to the signalmen about March 8th, 1950 without any authority to do so under the current agreement.

2—That accordingly the carrier be ordered to restore the performance of the aforesaid lathe work to the machinists.

EMPLOYES' STATEMENT OF FACTS: At Houston, Texas, the carrier maintains what is known as a maintenance of way repair shop. It is approximately sixty (60) feet wide and two hundred and seventy (270) feet long. It is equipped with facilities for maintaining and repairing all types of motor cars, tractors, machine and equipment used in the maintenance of way department and in the maintenance of signals.

The carrier employs in this shop a force of shop craft employes and signalmen including clerks and laborers, all under the supervision of one foreman and two (2) assistant foremen. The signal department is located in a small portion of the shop at one end whereas the other forces utilize the remaining portion of the shop and the machinists employed therein have performed all lathe work in connection with the maintenance of signal equipment and the maintenance of maintenance of way equipment for the past ten or more years. However, about March 8, 1950, the carrier transferred from these machinists to the signalmen such lathe work as making all types of brass bushings, turning armatures for all types of motors, turning out lens castings, enlarging piston ring grooves for over-size rings and other such lathe work relating to the repair of signal equipment.

This dispute has been handled with officers of the carrier from the bottom to the top and to date the carrier has declined to adjust it.

The agreement as amended effective September 1, 1949 is controlling.

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. The parties to said dispute were given due notice of hearing thereon.

Lathe work in connection with the maintenance of signal equipment is now being assigned to signalmen in the carrier's maintenance of way repair shops at Houston, Texas, on the theory they are entitled thereto under the scope rule of their agreement. The instant claim is based upon the premise machinists are entitled to perform such work under and by virtue of the terms of the machinists' agreement and we are asked to direct the carrier to assign it to them.

The carrier contends the Division cannot proceed to a decision on the merits of the claim because, as the record discloses, no notice has been given to the Brotherhood of Railroad Signalmen of America in conformity with the requirements of the Railway Labor Act (Section 3 First (j)). This contention has merit and must be upheld upon the authority of and for the reasons set forth in Award 1523 (Docket 1423), this day adopted. It follows the claim should be dismissed without prejudice.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February, 1952.

DISSENT OF THE LABOR MEMBERS TO AWARD NO. 1524.

The claimant organization contends that the scope rule of its agreement with the carrier requires certain work, currently being performed by employes in a different craft, to be assigned to and performed by employes in the craft represented by the claimant. The carrier contends, and the majority has held, that the dispute thus presented may not be heard and decided on its merits for the reason that the organization representing the employes currently performing the disputed work has not been given notice of the claim filed with this Division, and afforded an opportunity to appear and be heard throughout the proceeding.

The dispute presented by this claim relates only to the proper interpretation and application of the agreement between the claimant organization and the carrier. The determination of that question is in no sense an adjudication or determination of rights that may be claimed by the other employes under agreements of other organizations. We have held in a number of cases, as have the courts, that this Board's function is limited to the interpretation and application of the agreements upon which claims are based, and that questions of the validity and enforcement of the agreements as so interpreted are for other tribunals. Nor can we revise or amend

agreements so as to resolve conflicting or overlapping coverage of agreements of different organizations in cases of this sort.

Under these circumstances, it is evident that employes whose legal rights do not stem from the agreement placed before us for interpretation cannot be "involved" in this dispute within the meaning of Section 3 First (j) of the Railway Labor Act; nor does our determination of the dispute involve an adjudication of their rights under other agreements which would entitle them to notice as a matter of due process of law.

Another claim disposed of today (Award 1527, Docket 1420) illustrates the futility of the notice which the majority requires here. In that case the claim was dismissed on the basis of a finding that it involved a maintenance of way man whose rights could be adjudicated only by the Third Division of the Board. Precisely the same situation exists with respect to the employes who the majority holds are entitled to notice and an opportunity to participate in this proceeding. Their claimed rights can be neither established nor lost in a proceeding before this Division, and it is certainly not our function to issue advisory opinions for the benefit of the Third Division.

The majority recognizes in its opinion here that its action in dismissing this claim for lack of the notice in question represents a complete reversal of previous rulings of this and other Divisions of the Board. Several Federal court decisions are cited, and we are referred to additional decisions cited in Award No. 5432 of the Third Division, all to the effect that such reversal of our previous rulings is now required by "the established law of the land." We are advised that the **Hunter** and **M.K.T.** cases, both heavily relied upon by the majority, are still in process of litigation, and that the opinions cited involved only questions of the propriety of preliminary injunctions. Cases like the **Estes** and **Nord** cases are clearly not in point, because there the rights of the persons as to whom notice was required were necessarily being determined and adjudicated in the Board proceedings, because their rights and those of the claimants derived not from separate agreements, but depended upon the Board's interpretation of the same contract. And the only notice discussed by the Supreme Court in the case of **Elgin, Joliet & Eastern R. Co. v. Burley**, 325 U. S. 711, on rehearing 327 U. S. 661, was notice to "the aggrieved employe"—in other words, the claimant himself—and not notice to third parties who might claim inconsistent rights under different agreements (there being no such third parties involved in the **E. J. & E.** case).

On the other hand, in addition to well-reasoned opinions in previous Awards of the Board (see Third Division Awards Nos. 2253 and 4471, and this Division's Award No. 1359), the cases of **Washington Terminal Co. v. Boswell**, 124 F. (2d) 235, affirmed 319 U. S. 732, and **Order of R.R. Tel. v. New Orleans, Texas & Mexico Ry. Co.**, 156 F. (2d) 1, cert. den. 329 U. S. 758, clearly indicate the absence of any such notice requirement as that imposed by the majority here. Under these circumstances, we think the majority's conclusion as to the established law of the land with respect to the notice requirement is not merely premature, but is in fact erroneous.

For these reasons we are compelled to dissent from the Award dismissing the claim herein, and to state that in our opinion the dispute herein should have been heard and determined on its merits.

/s/ R. W. BLAKE

/s/ A. C. BOWEN

/s/ T. E. LOSEY

/s/ EDWARD W. WIESNER

/s/ GEORGE WRIGHT