Award No. 1525
Docket No. 1412
2-SP(PL)-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. 114, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the assignment of maintenance of way employes to the work of dismantling, repairing and assembling water pumps and fuel pumps used in shop yards and outlying points is improper.

2. That accordingly the carrier be ordered to assign the aforesaid work to machinists.

EMPLOYES' STATEMENT OF FACTS: The carrier has for several years assigned machinists coming within the scope of the motive power and car department agreement to perform the work of dismantling, repairing and assembling water pumps and fuel pumps used in shop yards and outlying points, also, during this period employes covered by the maintenance of way agreement were assigned to perform the work involved in this dispute.

This case was handled from bottom to top with carrier officials who all declined to adjust the dispute.

The agreement effective May 1, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYES: In consideration of the foregoing statement of dispute and the statement of facts, the Division is called upon to resolve whether the carrier, after having negotiated the current collective agreement, and agreed to therein, effective May 1, 1948, that machinists "employed in the Maintenance of Way Department", subject to the current agreement, would perform the work of ". . . **assembling, maintaining, dismantling . . . pumps,** . . ." can now entirely disregard such agreement provisions, and assign such work to employes other than machinists who come within the scope of an agreement, the provisions of which make no reference whatever to the work here in dispute.

The foregoing statement of dispute is supported in its entirety by the provisions of the current collective agreement; this fact cannot be denied, because:

Rule 53 of the stores department agreement:

"Except as otherwise provided in this Agreement, **machinists' work shall consist of** the following: **Building, assembling, dismantling** (not scrapping), **repairing, maintaining and installing** the metal parts of engines, **pumps**, cranes, hoists, elevators, pneumatic and hydraulic tools, machines, shafting and shop machinery, also laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in the performance of this work." (Emphasis supplied)

Neither of these agreements delegate to the machinists exclusive rights to the performance of work of dismantling, repairing and assembling pumps and, furthermore, do not contain a provision covering the performance of any machinists' work coming within the jurisdiction of the water service department of the maintenance of way department, the latter for the reason, as heretofore established, that such work in the maintenance of way department has since 1926, and prior thereto, been performed by employes within the coverage of the maintenance of way employes agreement.

Irrespective of the fact Rule 40 of the work equipment-roadway machines agreement and the classification of work rules in the other agreements do make reference to the work of dismantling, repairing and assembling pumps in the respective departments, the carrier insists there cannot be any basis under any of said rules for the petitioner's contention in this docket that the work in connection with the performance of that work in the water service department should be diverted from the employes covered by the maintenance of way employes agreement, a service which has traditionally been performed by them, and be assigned to machinists covered by any or all of the agreements with System Federation No. 114.

CONCLUSION

Having shown that certain employes involved in and having an interest in this dispute should be notified and permitted to become parties to this docket and afforded an opportunity to appear before the Division and be heard, the carrier suggests it to be the duty of this Division to give due notice of this proceeding and any hearing or hearings therein to the maintenance of way employes who are involved in the dispute, and, pending such notice, to suspend all further proceedings in this docket.

If, however, the Board elects to proceed in this docket without giving due notice of any hearing or hearings therein to the maintenance of way employes, who are involved in this dispute, the carrier submits it has conclusively established that the claim in this docket was not presented or progressed in accordance with the usual manner up to and including the chief operating officer of the carrier delegated to handle such disputes, and respectfully submits it should be dismissed.

Provided the Board, nevertheless, elects not to dismiss same, the carrier then requests the claim be denied on the showing it has made that the claim in its entirety is without merit.

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.

The machinists in this case claim that under their agreement the assignment of work in dismantling, repairing, and assembling water and fuel pumps used in shop yards and outlying points to maintenance of way employes is improper and that such work should be assigned to them.

The record discloses the carrier has a collective bargaining agreement with each craft, that the work involved is now assigned to and performed by maintenance of way employes, that the Brotherhood of Maintenance of Way Employes has not been served with notice of the pendency of the dispute pursuant to Section 3 First (j) of the Railway Labor Act, and that the carrier is contending this Division does not have the right to hear and determine the dispute in the absence of such notice.

Under the foregoing conditions and circumstances we are confronted with the identical question involved and disposed of by this Division in Award 1523 (Docket 1423), this day adopted. Therefore, based upon what is said and held in the findings of such Award, we are impelled to hold the instant claim should be dismissed without prejudice and it is so ordered.

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. 1525

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 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 opinion 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.

R. W. BLAKE

A. C. BOWEN

T. E. LOSEY

EDWARD W. WIESNER

GEORGE WRIGHT