

**Award No. 4431**  
**Docket No. 4371**  
**2-Mon.Con.-USofA-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

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**PARTIES TO DISPUTE:**

**UNITED STEELWORKERS OF AMERICA,  
A. F. of L. — C. I. O. Local Union 2203**

**THE MONONGAHELA CONNECTING RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** The United Steelworkers of America, AFL-CIO, Local Union 2203 (hereinafter referred to as the Union) for and on behalf of James V. Johnson and other employes (see Exhibits "A" and "B" attached hereto) request the Second Division of the National Railroad Adjustment Board (hereinafter referred to as the Board) to sustain the claims of the said employes upon The Monongahela Connecting Railroad Company (hereinafter referred to as the Carrier); to pay James V. Johnson three days' wages, or a total of twenty-four hours, at "pro-rata" rate; and to compensate at a like "pro-rata" rate the other claims of employes as set forth in Exhibits "A" and "B." The claims upon the Carrier are based on the Carrier's failure to assign the said employes to perform the duties of Hammer Operator as set forth in Article 34 of the agreement, effective May 1, 1953, as amended (excerpt of Article 34 attached hereto as Exhibit "C"), and past practice.

The duties and the operation of the Hammer Operators have been and are normally performed by Motive Power Department employes. However, since August 1961, the said duties were performed by a group of the Carrier's employes outside the Union's collective bargaining unit covering the Motive Power Department employes. This conduct is the basis for the claims herein.

**EMPLOYEES' STATEMENT OF FACTS:** For a long period of time prior to August 10, 1961, the carrier assigned the work of performing the duties of operating the hammer, which is in close proximity to the roundhouse area and adjacent to the roundhouse machine shop, to the employes represented by the union—more specifically the employes of the motive power department. However, on August 10, 1961, and at various times thereafter, the carrier assigned the duties of operating the hammer to employes outside the bargaining unit represented by the union. The said employes outside the bargaining unit were employes of the carrier's car department and represented by the Brotherhood of Railway Carmen of America (hereinafter referred to as brotherhood). It is these assignments by the carrier which the union is protesting and which are the basis of the claims herein. In each

The Carrier does not consider the filing of a letter of intention to file an ex parte submission as constituting processing to the National Railroad Adjustment Board in accordance with the time limit provisions of Article 26, and thus it feels that all claims prior to MP #89 have expired.

### THIRD PARTY NOTICE

In essence, the instant case is an attempt to secure for the employees represented by the Organization party hereto, the exclusive right to the work of operating the "hammer." In view of this, it is the Carrier's position that, in the event your Honorable Board should in any way contemplate a decision in the instant dispute other than a blanket denied based upon the hereinbefore outlined position—and such an event the carrier cannot possibly conceive—further proceedings must be suspended until the carrier's car department employees, who are represented by the Brotherhood Railway Carmen of America and who are involved and have an interest in the performance of the work in question, have been formally notified of this dispute and permitted to become parties to this docket with the concomitant opportunities of appearing and being heard. The principles outlined in this position control the so-called "third party notice" and are supported in a long line of Court decisions: See *Whitehouse v. Illinois Central Ry.*, 349 U.S. 366(1955); and *The Order of Railroad Telegraphers v. New Orleans, T. & M. Ry.*, 229 F 2d 59 (8 Cir. 1956). In addition, Awards Nos. 1523 and 1525 of the Second Division recognize the necessity of such notice, and the court decisions on which those awards are based represent the established law.

### CONCLUSION

The carrier has hereinbefore shown that the claims involved in the instant dispute are completely lacking in merit and are without foundation under the provisions of the current agreement or any interpretations related thereto, and respectfully requests this Honorable Board to confirm the position of the carrier and deny the claims.

**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 were given due notice of hearing thereon.

The Carrier, an industrial switching railroad, owns and operates 52 miles of track on the North and South banks of the Monongahela River at Pittsburgh, Pennsylvania.

In 1912, the Carrier purchased and installed in its Blacksmith Shop a steam driven Drop Forge Hammer. In 1940, the Hammer was converted to a compressed air operation.

The Blacksmith Craft lost its identity in 1959, when the Motive Power Department merged its crafts into the Diesel Mechanic Craft. Since the merger, Blacksmith work—when necessary—has been performed by various employes of the above Department.

On August 10, 11, and 14, 1961, the Organization charges that the Carrier assigned employes of the Car Department to use the Hammer in performing Car Department work—which work the Organization claims is theirs under Rule 34 of the controlling agreement.

The Organization's position is that:

1) Prior to 1940, and since certification of the Union (1940), the Hammer has always been part of the equipment worked by Motive Power Department employes;

2) the Carrier's action "is a violation of the agreement when it deprived employes of the Motive Power Department the work normally and regularly performed by them for the past forty years."

The Carrier's position, on the other hand, is that:

1) "the operation of the 'hammer' incidental to the performance of Car Department work—is properly allocable to Car Department employes, and the performance of such incidental work does not give rise to a valid claim for compensation by Motive Power Department employes;"

2) "Any and all claims so submitted are improper, completely lacking in merit and without foundation under the provisions of the Current Agreement \* \* \* ."

Neither the controlling agreement nor the record supports the Organization's position. The operation of the Drop Forge Hammer is incidental to the work of Car Department employes and, therefore, comes within the scope of their job duties.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1964.