**Award No. 4554**
**Docket No. 4536**
**2-CMStP&P-MA-'64**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.**

---

## PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

(a) That others than machinists were used to operate car journal brass boring machines to bore brasses for store order work.

(b) That machinists Dille, Westmark, Clifford, Wepfer and Sheldon be compensated for twenty (20) days pay at the straight time rate.

EMPLOYES' STATEMENT OF FACTS: During a period between January 10, 1962 and March 5, 1962, the Chicago, Milwaukee, St. Paul & Pacific Railroad, hereinafter referred to as the carrier, assigned carmen at its Tacoma shops to bore car brasses for store order consumption. Claimants Dille, Westmark, Clifford, Wepfer and Sheldon are machinists employed at the Tacoma shops, and fully qualified to perform the work in question. There exists complete accord between the carmen and machinists organizations insofar as concerns the jurisdiction of each craft relative to the work here involved. In verification of this the employes wish to submit a copy of jurisdictional agreement under date of January 29, 1960.

This dispute has been handled on the property in accordance with the agreement with all carrier officers authorized to handle grievances, including the highest designated officer, all of whom decline to adjust it.

The agreement effective September 1, 1949 and as Amended, is controlling.

POSITION OF EMPLOYES: It is submitted that under the provisions of machinists' special rules 50, 51, 52 and 53 of the controlling agreement, the work of operating car brass boring machines falls within the machinist jurisdiction. The operation with which we are here concerned is "machine boring" and the pertinent parts contained in the above mentioned rules which clearly identify this operation with the machinist craft, follow:

resents a jurisdictional question and under the provisions of Section 3 First (j) of the Railway Labor Act, due notice must first be given to the Brotherhood of Railway Carmen of America.

As to the merits of the instant claim, or rather the lack thereof, inasmuch as this is the same claim that was first submitted to the carrier on September 12, 1955 and later progressed to your board (Docket 2607) and resulted in Award 3419, the carrier, in the interest of brevity, will not restate its entire position here, but instead, wishes to merely direct your Board's attention to carrier's ex parte submission and carrier's reply to employes ex parte submission in Docket 2607, and take this opportunity to say that carrier's position with respect to the question here in dispute is made quite clear and we reaffirm our position as outlined therein at this time.

The carrier does, however, wish to make the following additional comments in connection with this case.

The employes refer to the machine involved in this dispute as "car journal brass boring machine", however, this is not a correct designation. There is no brass boring machine involved in this dispute, but instead the machine involved is a journal bearing fitting machine, referred to as "The Ajax Fitted Journal Bearing Machine" and such machine is pictured in Carrier's Exhibits "J" and "K" of carrier's ex parte submission covering dispute (Second Division Docket No. 2602) as between the machinists and the carrier in connection with the operation of the Ajax Fitted Journal Bearing Machine at Milwaukee, Wisconsin which, dispute was, as explained previously, progressed to your board and then subsequently withdrawn by the organization thereby resulting in dismissal Award 3417.

The carrier submits that carmen at Tacoma have, throughout all the years, operated journal bearing fitting and broaching machines for the purpose of broaching and fitting brasses and carmen at Tacoma have always performed the work of broaching and fitting brasses, either by hand or through the use of broaching and fitting machines.

The carrier submits that that which we have set forth herein clearly and conclusively reveals that the instant claim is entirely devoid of merit or, in other words, that there is absolutely no basis for the instant claim and, therefore, we respectfully request that it be denied.

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 waived right of appearance at hearing thereon.

The five claimants herein are machinists at Carrier's Tacoma, Washington shops. They claim that others than machinists, i.e., carmen, were used to operate journal brass boring machines and that as a result they should be compensated for 20 days' pay at the pro rata rate.

The record discloses that this Organization, in Docket 2607 — Award No. 3419 before this Division, submitted a claim from the machinists at the Carrier's Tacoma shops for pay for Machinist James Durham because the "Carrier improperly assigned other than machinists to operate a Car Brass Boring Machine".

It is not disputed that the claim herein and the claim from Award No. 3419 involved the same type of work that was performed on the same type of machine.

The claim in Award No. 3419 was withdrawn at the request of the Organization on the 17th day of March, 1960. The claims herein are for the period January 10 to March 5, 1962.

To have an affirmative award in the instant case it would be necessary for us to find that the Carrier improperly assigned other than machinists to operate the "Ajax Fitted Journal Bearing Machine". The identical finding would likewise have had to have been made for an affirmative Award in Award No. 3419.

We are of the opinion that since the claims from this case and the claim from Award No. 3419 cover the same parties, location, type of machine, objection by the employes and findings for an affirmative award, they are identical. Moreover, it is very significant that the claim from Award No. 3419 was a continuing one which requested that the claimant be compensated for 8 hours "for August 29, 30, 31 and September 1, 1955, and each day thereafter until this work is assigned in accordance with the current agreement."

The employes saw fit to withdraw the claim in Award No. 3419 and did not re-file it or this instant claim, within the time limits imposed by Article V of the August 21, 1954 Agreement between the parties.

We believe that the Organization cannot now ask this Division to render an affirmative award in a case requiring an identical finding of fact to the one that it has voluntarily withdrawn when, it is remembered, the record discloses that the basic complaint was known and processed as a continuing claim on the property in 1955, presented and argued before this Division in 1957, withdrawn in 1960 and then allowed to remain dormant for a greater period of time than was agreed to by the parties in Article V because, in the instant case, the Carrier asserts the rule of Article V as an affirmative defense and such assertion bars us from rendering the affirmative award requested, for the parties have previously agreed that it would be so barred.

AWARD

Claims denied in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July 1964.