Award No. 4713

Docket No. 4572

2-PRR-MA-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Machinists)

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier violated Article X of the Scope of the Agreement signed in Philadelphia, Pennsylvania September 12, 1960, effective October 15, 1960, and letter of understanding dated December 20, 1960 from Mr. Herman Kendall, Manager, Labor Relations, when it took the drilling of Freight Car Truck Side Frames from the Machinist Craft and assigned it to Carman Craft employes.

2. That the Carrier be ordered to compensate W. J. Probst, Machinist, eight (8) hours pay at Grade "G" rate for February 5, 1962 and for each and every day thereafter that you use carman craft employes to drill freight car truck side frames.

EMPLOYES' STATEMENT OF FACTS: Machinist W. J. Probst, hereinafter referred to as the claimant, is employed by the Pennsylvania Railroad Company, hereinafter referred to as the carrier, in the Samuel Rea Shop of the heavy repair shops, car shop unit, Hollidaysburg, Pennsylvania.

On February 10, 1958, a radial drill press was installed in the Truck Shop, Samuel Rea Shop, to perform the drilling of the holes in truck side frames. The operation of this drill press was assigned to a machinist who performed the work for almost 4 years.

On or about December 4, 1961, a Hydraulic Drilling Machine, built by the carrier, was installed in the East Truck Shop of the Samuel Rea Shop, and the drilling of the truck side frames was assigned to carman craft employes.

This machine is a two-spindle, air hydraulic machine and there never was a carman at the Samuel Rea Shop nor at any other car shop in the heavy repair shops assigned to operate a machine like this air hydraulic machine.

On March 6, 1962, Local Chairman N. A. Dunkle filed a protest and time claim with Mr. C. G. Pashke, Foreman, Samuel Rea Shop. The claim was denied by the foreman under date of March 16, 1962. The case was then docketed with the Superintendent of personnel by the local chairman under date of April 6, 1962, for the next regular meeting, scheduled for April 17, 1962. The superintendent of personnel denied the claim, in writing, under date of May

understanding which provides that in the case of a jurisdictional dispute such as involved here no claims will be presented to the company. Because this provision bars claims until the carrier receives notification of the settlement of the jurisdictional issue, the carrier submits that the board is without authority to award compensation in this case. If, contrary to all of the foregoing, award of compensation is rendered, your honorable board must take into consideration any earnings of the claimant during the period it may be determined he is entitled to compensation. Nothing in the applicable agreement replaced the general rule of law, recognized in numerous awards by the National Railroad Adjustment Board, that one claiming a violation of a contract must attempt to mitigate the damage suffered. See Second Division Award 3680 and Third Division Award 10963.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Second Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Second Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable agreement between this carrier and the Railway Employes' Department, A. F. of L.-C. I. O., and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the organization in this case would require the board to disregard the agreement between the parties, hereinbefore referred to, and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by parties to the applicable agreement. The board has no jurisdiction or authority to take any such action.

CONCLUSION: The carrier has shown that under the terms of the Agreement (1) the claim has not been properly progressed as required in Rule 4-0-1; (2) neither Article X of the Scope nor the Letter of Understanding of December 20, 1960, were violated in any manner by the carrier; and (3) the claimant is not entitled to the compensation which he claimed.

Therefore, the carrier respectfully submits that your honorable board should dismiss or deny the claim of the organization in this matter.

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 work reserved to machinists and assigned to them prior to December 4, 1961 was not the drilling of freight car truck side frames, although that was what was accomplished, but the operation of a radial drill press. When a decision was made to accomplish that drilling on a new and different machine, the Carrier had the responsibility for assigning its operation and did so. Disagreement by the Organization with such assignment is not a proper subject for a claim until the matter has been referred to and decided by the Jurisdictional Committee.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May, 1965.