Award No. 5789
Docket No. 5615
2-PC(PRR)-SM- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES DEPARTMENT, AFL — CIO
(Sheet Metal Workers)

PENN CENTRAL COMPANY
(Formerly Pennsylvania R. R. Co.)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier violated the rights of the Sheet Metal Workers' Craft in assigning to the employes of the Carmens' Craft on the Pennsylvania Railroad, the application of Sheet Metal Workers' work such as the application of galbestos corrugated metal roofing material, etc., on a new building known as the Lumber or Material Shed at the Samuel Rea Shop, Hollidaysburg, Pennsylvania.

2. That accordingly, the Carrier be ordered to compensate the following named claimants for the period February 10, 1966 to and including March 18, 1966 for the one-thousand (1000) hours involved in the application of this roofing.

   *We additionally claim fringe benefits for any of those named claimants who were furloughed from the Sheet Metal Workers' Craft because of this improper assignment of work.

CLAIMANTS:

J. L. Swartz	A. D. Rodgers	R. L. Zeth	A. Constantini
R. L. Swander	J. J. Horomanski	D. M. Colello	L. F. Wilt
C. E. Weisel	G. C. Rodkey	R. W. Wilt	D. B. Robinette
G. R. Knotts	K. Burket	J. A. Ruckinger	G. Andros
A. M. DeAntonis	A. M. Pirro	J. C. Treese	S. W. Hicks
R. D. Stoltz	W. H. Champeno	J. I. Ryan	P. N. Della

*The employes claim for fringe benefits refer to credit for vacation allowance for days lost because of this improper assignment, payment for Holiday pay, payment of Birthday pay and payment of premium for Hospitalization and Life Insurance if these fringe benefits were denied the employe who was furloughed because of this improper assignment of work.

EMPLOYES' STATEMENT OF FACTS: The above named sheet metal workers, hereinafter referred to as the claimants, are employed by the

ference between what he earned and what he would have earned had the work in question been assigned to sheet metal workers.

Moreover, the claimants would not, in any event, be entitled to "fringe benefits" as claimed which have been outlined by the employes to include, "credit for vacation allowance for days lost . . . payment for Holiday pay, payment of Birthday pay and payment of premium for Hospitalization and Life Insurance. . . "

The carrier asserts that such claim is not supported by the rules agreement and it is not in keeping with the so-called "make-whole" principle so often followed by the N.R.A.B. (See First Division Award 16408) and other comparable tribunals.

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 the agreement applicable here has not been violated and that the claimants are not entitled to the compensation which they claim.

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

The carrier demands strict proof by competent evidence of all facts relied upon by the employes, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

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 involked 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 no jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In February and March of 1966 the Carrier assigned to employees of the Carman craft (maintenance carpenters) represented by the Transport Workers Union, the work of applying Galbestos corrugated metal roofing material to the roof of a new building at the Samuel Rea Shop at Hollidaysburg, Pennsylvania. The Sheet Metal Workers International Association (herein called the Organization) thereupon filed this claim based upon the contention tht the described work was reserved for exclusive performance by employees represented by the Organization under Article VII, titled "Classification of Work", of the Agreement.

The Transport Workers Union, the Sheet Metal Workers and the Carrier are parties to an agreement titled "Memorandum of Understanding In Connection With The Agreement of September 12, 1960 —." Item 7 thereof reads as follows:

"7. (In connection with jurisdictional disputes.)

It is understood that the Transport Workers and the System Federation will establish a joint jurisdictional committee for the purpose of disposing of disputes which may arise as to which one of the crafts of employes covered by their respective Agreements is entitled to perform work specified under Articles V to XII inclusive (Work Classification Rules) and that no claims will be presented to the Company in connection with such disputes regarding the assignment of work prior to decision by the said committee and notification to the Company of such decision."

The record in this case establishes beyond question that this is a jurisdictional dispute where two crafts are each claiming the exclusive right to perform certain work under their respective work classification rules. Both have agreed (Item 7, supra) that no claims will be presented to the Carrier involving jurisdictional disputes prior to referral to decision by the joint jurisdictional committee which they agreed to establish for the specific purpose of disposing of such disputss.

This Board may not properly ignore valid and legally-binding agreements entered into in good faith by the parties. In the case at hand such an agreement requires the submission of disputes to a committee as to which one of the crafts covered thereby is entitled to perform work described by the work classification rules and pending such decision it is also agreed that no claim in connection with such disputes will be progressed.

Accordingly, we find that this dispute is properly referrable to the joint jurisdictional committee under Item 7 of the aforesaid Memorandum of Understanding.

Therefore, this Board has no jurisdiction to hear and decide the merits of the case.

It will be dismissed without prejudice.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 7th day of November, 1969.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.