Award No. 6238
Docket No. 6097
2-SCL-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current applicable agreement the Carrier violated said agreement when Carrier officials assigned other than carmen to perform carmen's work. The work was performed at the Hamlet Roadway Shop, Hamlet, North Carolina, on May 7, 1969.

2. That accordingly the Carrier be ordered to compensate Carman W. B. Wright eight (8) hours at time and one-half rate of pay because of the violation.

EMPLOYES' STATEMENT OF FACTS: Mr. W. B. Wright (hereinafter referred to as claimant) is employed by the Seaboard Coast Line Railroad Company (hereinafter referred to as carrier) as a carman and holds seniority as such at the Carrier's Roadway Equipment Shop at Hamlet, North Carolina.

On May 7, 1969, the claimant was regularly employed and assigned to a carman's position in the Roadway Shop. By his employment and assignment, he held contractual rights to perform work covering his craft and class as described in the applicable agreement.

On May 7, 1969, the carrier's supervision in the Roadway Shop ordered a bench or stand to be constructed. The purpose of the bench or stand was so a hydraulic hose coupling press could be placed upon it. The bench or stand was constructed so the press would be at a convenient height from the floor for employes who may later use the press. It was completely separate and independent of the press. The press could have performed its function, without the bench or stand, from the floor, from a possible existing table, bench or stand. The bench or stand constructed on May 7, 1969 was a thing of convenience.

vember 30, 1970, from the General Chairman of the Machinists' craft to the effect:

> "I have investigated your claim with my people locally and find that the hydraulic hose coupling press is not bolted or fastened in any way to the table but merely sets on the table and that in most instances over the years Carmen have constructed benches used for various purposes in the roadway shops at Hamlet, North Carolina.
>
> The Machinists make no claim to the work involved in the claim filed by your Local Chairman on June 23, 1969."

This letter was mailed to carrier by the General Chairman (Carmen) and received in carrier's office **December** 4, 1970. It is obvious no discussion of General Chairman Meeks' letter was held on the property prior to carrier's declination of claim **February 19, 1970.** Therefore, as the claim was declined February 19, 1970, and as General Chairman Meeks' letter was not received by carrier until December 4, 1970, the nine-month time limit provision contained in Rule 30, 1 (c) (Exhibit C), has not been complied with by the organization, the letter should be disregarded. Carrier only granted 60-day extension for the purpose ". . . to submit this claim to the Second Division . . ." and not for the purpose of reopening the dispute on the property or seeking additional information which was not presented to carrier prior to denial of claim. Such action on the part of the organization is not in the interest of **meaningful negotiations.**

However, without prejudice to our position, the letter from General Chairman Meeks only established that the Machinists ". . . make no claim to the work involved. . . ." Why should the machinists claim the disputed work? A machinist welder performed the work, so it follows that the machinists could not possibly have a claim. Further, General Chairman Meeks' reference to **benches** is not the issue; the work in dispute is a **stand** upon which a hydraulic press is mounted. A stand is not a bench by any stretch of the imagination. Also, it is interesting to note that General Chairman Meeks did not state that such work belonged exclusively to the carmen's craft even though he referred to "benches" rather than "stands".

As previously stated, the organization has not met its "burden of proof." Carrier reaffirms that this claim is totally lacking in merit, and respectfully requests that your Board deny the claim in its entirety.

The respondent carrier reserves the right, if and when it is furnished ex parte petition presented by the petitioners in this case, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and charges as may have been advanced by the petitioner in such petition and which have not been discussed herein.

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 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.

This claim arose as a result of the Carrier's Supervision at its Hamlet, North Carolina Roadway Shop assignment of a machinist, on May 7, 1969, to construct a metal stand on which a hydraulic hose coupling press was to be set. The Petitioner claims that such work falls within the Classification of Work of Carmen as provided in Rule 100 of the Controlling Agreement and should have been performed by an employe in that classification. It requests compensation for the senior employe in the craft for lost work opportunity caused by the alleged improper assignment.

The thrust of the Carrier's reply is that the work involved was not exclusively that of the Carmen's Craft, and that it was an item never before made at the Hamlet Roadway Shop and as new work, it is within the discretion of Management to determine who shall perform it. Further, the claimant was fully employed at regularly assigned duties on the day in question and suffered no loss of earnings and, therefore, is not entitled to any compensation, even if a misassignment were to be found.

There is no disagreement that carpentry work in the shop falls under Rule 100 which sets forth the Carmen's Classification of Work. It has long been held by this Division that the job descriptions in the controlling agreement delineate the rights of each craft to have the functions set forth therein assigned to qualified employes in the category. See Awards 1088, 1269, 1656, 2199, 2506, 2214, 2921, 2459, 3405, 3410, 4085, 4591 and 5887.

The question is whether the making of this stand can be considered carpentry work. It certainly was not an integral part of the tool or equipment which was to be placed upon it as a convenience in its operation. The press was not to be bolted to the stand.

In Award 2506, Referee Whiting outlined that items which fall within the character of furniture and fixtures are carpentry work and subject to Rule 100 assignment. The changes in materials used for such products in recent years resulted in carpenters working with other than wood in constructing furniture and fixtures. The making of work benches, storage bins and shelving out of metal is typical of this factor and would be done by carpenters.

It is not clear from the record before us just what was new about the work involved in making this stand, unless it is the fact that this was the first time a metal stand of the specific and precise dimensions and for this special purpose had been made in the shop. This would not be an acceptable basis for a declaration of new work without opening up the door to a vast undermining of the intent of the coverage of the Rules relating to Classification of Work. The Organization did set forth that items of comparable nature were contractually and historically performed by Carmen in the past at this installation. We must assume, from the job description that this was true and we cannot require the burdening of the record with examples to support such an allegation in the circumstances.

The work was that of the Carmen and should have been assigned to a qualified employe in that classification. The misassignment deprived a Car-

man of work to which he was entitled. Although we have no way of knowing, as a certainty, we must assume that had a Carman been assigned to produce this stand in question and his regularly assigned duties remained to be done that day, that overtime would have been required on the part of a Carman. The Claimant was, according to the uncontroverted statement of the Petitioner, first man out on the Carmen's overtime board on the date involved, and he is to be compensated accordingly, not as a penalty for violation of the agreement, which we have regularly held to be inappropriate, but as restitution for lost work opportunity.

The Organization alleged, without proof, that it took eight (8) hours to produce this stand. The Carrier averred that a maximum of four (4) hours were involved. The Organization had the burden of proof, and failed to validate its contention. We, therefore, are accepting the Carrier's estimate of the time involved.

AWARD

1. Claim sustained.

2. Claim sustained as modified to the extent that the Carrier is required to compensate the claimant with four (4) hours pay at time and one-half his regular hourly rate of pay he was earning on May 7, 1969.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February, 1972.

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