CORRECTED

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6774
SECOND DIVISION Docket No. 6590
2-L&N-SM-'74

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

Parties to Dispute: (Sheet Metal Workers' International Association
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That the Louisville and Nashville Railroad Company violated the controlling Agreement, particularly Rule 87, on December 24, 1970, when they improperly assigned Electricians the duty of installing high and low copper freon pipes to air conditioning unit, Second Floor, South Louisville Store Department, Louisville, Kentucky.

2. That accordingly the Louisville and Nashville Railroad Company be ordered to compensate Sheet Metal Workers J. Bowles and T. E. Greenwell, Jr., for eight (8) hours each at the pro rata rate of pay for such violation.

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.

This claim arose out of the assignment by the Carrier of two electricians to perform work which Petitioner contends was work accruing to mechanics of the Sheet Metal Workers' Craft pursuant to the provisions of the Classification of Work Rule 87 of the controlling agreement between the Parties.

It is uncontroverted that on and before December 24, 1970, Carrier undertook "the modernizing of existing buildings by the installation of a centralized Trane combination heater and air-conditioning system. An installation of such magnitude required the manufacture of air ducts for controlling the flow of air, both hot and cold to all parts of the building. To the heating section of the unit it was necessary that gas

and hot and cold water pipes be installed which involved the cutting, threading, applying of all valves, couplings, controls, etc. Both black and galvanized pipe were used.

"The above work was correctly assigned to and was performed by the Sheet Metal Workers.

"The Trane air-conditioning section to obtain maximum efficiency required that the cooling radiator be placed outside of the building which is some 40 ft. from the compressor itself. The B&B gang fastened the cooling radiator outside of the building and drilled necessary holes in the building for" ... "workers to connect the high and low copper pipes to it from the compressor. Following the print of instructions for proper application of the unit furnished by Mr. Ballard to the Sheet Metal Workers ... the Sheet Metal Workers obtained all necessary copper pipe, fittings and torch to be used to easy flow various joints and connections to the copper pipe. However, upon starting to work on the 5/80D and 7/80D type L copper freon gas pipes, Mr. Ballard said Mr. C. D. Medor had given this work to the Electricians and for the Sheet Metal Workers to return to the shops. They were gold to leave their torch, copper pipe and fittings there for the other craft to use." (The materials in quotation marks are taken from Petitioner's March 18, 1972 letter which is marked Exhibit "S" appended to the submissions of both Petitioner and Carrier and is not contested as to its factual content).

Carrier challenges this Board's authority to determine this dispute herein. It sets forth that in accordance with long standing practice on the property, Carrier honored the claims of the Electrician's Craft that this phase of the work rightfully must be assigned to mechanics of that classification and that the conflict constitutes a jurisdictional dispute, subject to processing in accordance with Appendix "A" of the controlling agreement, relative to such matters, and that Petitioner herein has not complied therewith and is therefore foreclosed from having this claim considered by the Board on the merits and it should be dismissed.

I

The Carrier having raised a third party's interest in the matter, the Board, pursuant to Section 3, First (j) of the Railway Labor Act as Amended, gave due notice to the International Brotherhood of Electrical Workers, via the Railway Employes' Department, A.F.L.-C.I.O. of the claim herein, affording it the right to intercede in behalf of the employes it represents. The Electrical Workers filed an ex-parte submission, rebuttal submission to Petitioner's ex-parte submission and appeared and argued at the hearing conducted by the Board in which all Parties concerned participated.

The threshhold issue to be resolved, is whether the Sheet Metal Workers complied with its alleged contractual obligation to follow the edicts of "Appendix 'A'" of the controlling agreement. This Board is most cognizant of the rationale underlying the documents which are the component parts of said Appendix. The controlling agreement is one between Carrier and six unions representing various categories of employes employed by it and falling under the generally accepted connotation of "shop crafts". In the nature of things, changes in method of operation, equipment used, techniques for maintenance and repair of installations, facilities, rolling stock, etc., must take place as Carriers seek to "keep up" with the times and endeavor to provide a viable system of transportation. The Organizations, Parties to the jointly entered into controlling agreement, determined to avoid controversies concerning the performance of certain work which the referred to changes brought about. Thus on July 13, 1943, the System Federation composed of representatives of six Organizations representing shop crafts covered by the controlling agreement with this Carrier, advised Carrier of the agreement they had reached to avoid controversy and disruption of services stemming from disagreements as to which craft shall perform certain work required by Carrier. The key portions of said notice to Carrier, pertinent to the dispute before us, read:

> "... no general chairman, or other officer, representative or member of any of the organizations signatory hereto, will individually request management to take work from one craft and give it to another craft.
>
> ... we will find a way to reach an agreement and settle any disputes that may arise between any two crafts signatory hereto, involving jurisdiction of work, and when such dispute has thus been settled, then request will be presented to management for conference to negotiate the acceptance by management of the settlement thus made.
>
> ... each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of any new processes, and that the introduction of a new process does not give any craft the right to claim the exclusive use of a process or a tool in order to secure for itself work which it did not formerly perform.
>
> In the event of any disagreement between two or more crafts as to the proper application of the above rule then the craft performing the work at the time of the change of the process or tool shall continue to do the work until the organizations involved have settled the dispute and the System Federation signatory hereto has presented such settlement to management, requested a conference and negotiated an agreement for acceptance of such settlement by management. ..."

Carrier replied on August 9, 1943:

> "The Management appreciates the fact that it is your desire to settle these matters without controversy and ... the Company was not going to have any trouble by reason of jurisdictional disputes within your crafts, that you would settle these matters between you.
>
> ... I do not understand what there is about the matter that you have asked that the Company enter into any kind of an agreement. Naturally it will be our purpose to carry out the agreement in all cases and will not be the purpose of the Company to in any way infringe upon the rights of any craft."

Under protest, the Sheet Metal Workers acceded to Carrier's exhortations to meet with the Electrical Workers, with reference to the work involved in the installing and connecting of copper tubing necessary for freon gas to be transmitted between the cooling radiator outside Carrier's Stores Department Building, Louisville, Kentucky, and the compressor located within the structure. Representatives of the Organizations undertook a joint study of the work involved, as appendix "A" of the controlling agreement indicated they would. They could not resolve their differences as to which craft was, pursuant to the classification of work provisions of the controlling agreement as applied on the property entitled to be assigned to the work involved. The classification of work provisions of the controlling agreement as applied on the property entitled to be assigned to the work involved. The Electrical Workers' representative did make a compromise proposal to the Sheet Metal Workers, the terms of which are only vaguely brought to our attention. The Sheet Metal Workers did not formally or directly reply to same. Instead, it moved its claim before this Board.

Carrier and the Electrical Workers aver that this failure on the part of the Sheet Metal Workers left the so-called jurisdictional dispute in an undetermined status and accordingly, may not be acted upon by this Board. The submission of the claim by the Sheet Metal Workers to this Board constituted a clear and definitive rejection by that Organization of the referred to, although not specifically placed before us, Electrical Workers proposal. It must be noted that, even if the Sheet Metal Workers had agreed to said proferred compromise, Carrier was not bound thereby, and could, pursuant to Appendix "A" refuse to comply therewith. In its denial letter of April 8, 1971 (Carrier Exhibit "E") Carrier asserts that it was not a Party to and never agreed to Memorandum of Understanding reached between the Sheet Metal Workers International Association and the International Brotherhood of Electrical Workers in June, 1959, known as the, "Miami Agreement" which may have a relationship to the dispute herein.

Where do we go from there? Appendix "A" makes no provision for circumstances where an attempt by the Organizations to resolve an alleged jurisdictional dispute fails. Absent such an agreement, the impact of Appendix "A", a Carrier's refusal to be a party to and accede thereto, restores the normal procedures for processing a claim of non-compliance with a classification of work rule of the controlling agreement, as held in Award 2898 of this Board. It most certainly is available to Petitioner in the instant dispute. Clearly distinguishable are Awards 2747 through 2780 and 2931 through 2936, in which this Board remanded similar claims for further handling on the property where it was firmly established that there was an agreement in accordance with letters comparable to those set forth in Appendix "A" of the controlling agreement between the Parties hereto. However, the Petitioners in those cases did not fulfill the procedural steps called for in such letters and the claims were referred back to the property in order that the conditions precedent to this Board's consideration thereof could be satisfied. The elements of those cases are not present here. The purposes of the Railway Labor Act in establishing the National Railroad Adjustment Board to bring to a conclusion disputes arising out of the application and interpretation of Agreements between parties subject thereto would be frustrated if we were to refuse to assume jurisdiction and render a determination of the dispute underlying this claim.

II

The application of the Classification of Work Rule 87 of the controlling agreement was duly dealt with in Award 3770 involving a dispute between the same Parties as are before us in this case. Although in the situation then raised, Carrier had employed an outside contractor to install air-conditioning equipment in one of its buildings, this Board sustained a claim which charged that "... other than Sheet Metal Workers were improperly used to perform the work of installing and assembling all piping and pipe fittings in connection with the installation of all air conditioning units and their appurtenances..." Therein is clearly delineated the extent to which the Sheet Metal Workers' Classification of Work Rule applied to newly installed air-conditioning equipment. The fact that in the dispute before us employes of the Carrier in another craft were employed to do the work which an outside contractor was used to do in 1957 and 1958 does not change the tenor of the precepts of Award 3770. Nothing in the record before us warrants finding that determination defective and it is therefore reaffirmed. The practices alluded to with reference to maintaining, servicing, and repair of air-conditioning units is not applicable to the installation of new heating and air-conditioning equipment such as that which took place in December, 1970 in Carrier's Stores Building in Louisville, Kentucky. Rule 87, as Award 3770 clearly held, requires the assignment of all piping work from the cooling radiator to the compressor be made to Sheet Metal Workers.

III

There is serious controversy in the record as to the remedy for the breach of the Agreement and there is insufficient evidence to enable the Board to arrive at an appropriate conclusion thereon. We are referring this aspect of the claim back to the Parties, without prejudice, for their further efforts to resolve this, consistent with the holdings of the Board relative to making employes whole for alleged damages sustained through breach of an agreement.

A W A R D

Part 1 of Claim sustained.

Part 2 of Claim is remanded in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of October, 1974.

G. M. YOUNG

CARRIER MEMBERS' DISSENT TO AWARDS 6774, 6775, 6776, 6777, 6778

(Referee Shapiro)

Carrier Members respectfully submit that these awards are invalid on jurisdictional grounds.

The author of these awards refuses to recognize and enforce clear agreement provisions which all parties to this dispute frankly concede are binding upon them and those provisions establish the usual manner for the handling of such claims. The provisions read:

> ". . . no . . representative of organizations signatory hereto, will individually request management to take work from one craft and give it to another craft . . .
>
> ". . . we will find a way to reach an agreement and settle any disputes that may arise between any two crafts signatory hereto, involving jurisdiction of work, and when such dispute has thus been settled, then request will be presented to management for conference to negotiate the acceptance by management of the settlement thus made." (Underlining added.)

We do not believe the parties could have found language that would have more clearly expressed an agreement absolutely prohibiting any of the signatory organizations from individually presenting to Carrier a claim involving jurisdiction of work and another signatory organization. Furthermore, the record leaves no room whatever to doubt the fact that these clear provisions are an agreement that binds all of the parties to the instant dispute. Carrier and the Electricians both cite and rely on them and the petitioning Sheet Metal Workers concede their existence, never question their complete validity, never claim they have been complied with, but attempt to avoid their effect in these particular cases by advancing the incredible argument that these cases do not come under said agreement provisions because the piping work involved is allegedly reserved to Sheet Metal Workers by their Classification of Work Rule. The complete answer to this argument is that the parties had before them the Classification of Work Rules when they agreed to said provisions, yet they saw fit to establish no exception to their unconditional commitment.

These awards significantly do not adopt this absurd argument of the Sheet Metal Workers. Rather, the author contrived objections of his own to the crystal clear agreement, referring to the obligation of the parties thereunder as an "alleged contractual obligation", citing the irrelevant fact that Carrier was not a party to the "Miami Agreement" and concluding that "Appendix 'A' makes no provision for circumstances where an attempt by the Organizations to resolve an alleged jurisdictional dispute fails." (Underlining added.)

In view of the confusion that is so abundantly apparent in these awards, we wonder what is meant by this reference to an "alleged jurisdictional dispute"; therefore, we will avoid that terminology and speak in the clear, unambiguous and absolute terms of the agreement provisions that are controlling. Those provisions say that no signatory organization "will individually request management to take work away from another craft" and that the signatory organizations "will find a way to reach an agreement and settle any dispute that may arise between any two crafts signatory hereto, involving the jurisdiction of work, and when such dispute has thus been

"settled, then request will be presented to management . . ." Certainly, these claims come under the ban of those provisions, and the author of these awards has simply refused to recognize said provisions and give them their intended effect.

As the Electricians point out in their third party submission, Section 3 First (i) of the Railway Labor Act provides that disputes cannot be brought to this Board until they have been handled on the property in the usual manner; and the usual manner for handling a jurisdictional dispute of the type involved in these claims makes it mandatory that agreement be reached by the two organizations claiming the work before any claim can be submitted to Carrier and further processed.

This Board has consistently and without exception recognized that a rule of procedure such as that quoted above must be complied with as a condition precedent to properly invoking the jurisdiction of this Board. In Award 2898 which is cited in Award 6774 as authority for assuming jurisdiction in the instant cases, the Board expressly found that: "The said dispute was settled under the jurisdictional dispute procedure of February 15, 1940 between the organizations by agreeing that the work belonged to the Sheet Metal Workers." Certainly that award is no authority for assuming jurisdiction in the instant cases where no agreement was reached and it was the petitioning organization that terminated the negotiations of the parties. See Awards 2747 through 2780 (Smith), 2931 through 2936 (Kiernan), 5789, 5793 (Coburn), 6759, 6763, 6765 (Eischen).

The cited Eischen awards were released a few days after release of the proposals in the instant cases and thus represent the latest expression of any Referee concerning the jurisdictional question presented in these cases. It will be observed that the last Eischen award (6765) involved the same Petitioner, the same Carrier, and the same agreement that are involved in these cases. This award correctly concludes:

> "We have often decided cases of the type presented herein and we can see no justification for now deviating from that clear precedent. See Awards 2931, 2936, 5789 and 5793. We cannot ignore valid and legally operative agreements entered into in good faith by the parties, notwithstanding subsequent changes in alliances and allegiances. In the instant case, such an agreement contemplates the submission of such dispute to attempted mutual resolution among the Organizations involved with conference negotiation with management for acceptance of such inter-Organizational settlement.
>
> "We find that the instant dispute is referrable properly to the resolution machinery established by Appendix A of the Agreement and is prematurely before our Board for adjudication pursuant to the provisions of Section 3, First (i) of the Railway Labor Act, as amended, and Circular No. 1 of the National Railroad Adjustment Board.
>
> "Consistent with the foregoing, we are without jurisdiction to decide this claim on its merits. Accordingly, it will be dismissed without prejudice." (Underlining added.)

These claims also should have been dismissed for lack of jurisdiction because they have not been handled in the usual manner.

J. F. Taylor

H. A. Franchesco

D. T. Hanley

W. B. Jones

A. M. Young