Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6990
SECOND DIVISION Docket No. 6815-T
2-C&NW-MA-'76

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

(a) The Chicago and North Western Transportation Co. violated Rules' #6-29-53-61-62 when they arbitrarily assigned Machinist work to Electricians when they established a new traction motor shop at Oelwein, Iowa Shops on October 3, 1973.

(b) The Union requests the Company to assign this work in accordance with the Machinists Special Rule #62; to pay Machinists F. Sigglehov and B. Shannon eight (8) hours each at the pro rata time and one-half rate of pay, and all others cited in Exhibits 18, 19, 20 and 21, accordingly, until the Carrier corrects this instant violation, as this is a continuing claim.

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 dispute involves a jurisdictional question and the International Brotherhood of Electrical Workers is a party in interest which has elected to file a submission.

Petitioner claims the work of removal and replacement of armature ball bearings on traction motors at Carrier's Oelwein, Iowa repair facility, which work Carrier assigned to Electricians represented by the I.B.E.W. The factual history of this type of work is relevant. Prior to May 1956 traction motors were rebuilt and overhauled at Carrier's M-1 Shop in Chicago. After May 31, 1956, Carrier elected to discontinue the rebuilding, overhauling or

repairing of electrical equipment at the M-1 Shop and purchased replacement equipment from outside sources. Subsequently Carrier acquired six other railroad companies. In 1972 Carrier decided to establish a traction motor shop to rebuild, repair and overhaul diesel locomotive traction motors at Oelwein, Iowa. Prior to the opening of the new facility Carrier met jointly with the General Chairmen representing Petitioner and the I.B.E.W. to inform them of Carrier's plans and to make sure that there would be no dispute over the assignment of work at the new facility. That meeting took place on approximately April 2, 1973 and resulted in an understanding, but no written agreement, that the division of work at Oelwein would be on the same basis that the work had been accomplished prior to May 31, 1956 at Carrier's M-1 Shop in Chicago. There is substantial agreement with respect to the facts outlined above. It is noted that in Award 3184 which dealt with the closing of the M-1 Shop we held that electricians in the M-1 Shop prior to its closing were engaged in repairing, rebuilding and overhauling electrical equipment, particularly diesel electric locomotive components. The work force involved at Oelwein at the time of the instant dispute were basically six electricians and one machinist.

Petitioner bases its position on the following arguments: 1. Machinists' Classification of Work Rule is controlling and the division of work at Oelwein is incompatible with it; 2. The division of work at Oelwein is not on the same basis as when the work was performed at the M-1 Shop in Chicago; 3. Under the Miami Agreement of February 13, 1958 certain aspects of the work now being performed by Electricians should be performed by Machinists. Rule 62, the Classification of Work Rule for Machinists provides as follows:

> "MACHINISTS' WORK. 62. Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling, and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery, ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding, axle truing, axle, wheel and tire turning and boring; engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting, and breaking of all joints on super-heaters, oxy-acetylene, thermit, and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus, and all other work generally recognized as machinists' work."

As support for its contentions with respect to the division of the work at the M-1 Shop prior to 1956, Petitioner presented, on the property three completed questionnaires by three unidentified machinists who purported to have knowledge of the work done prior to 1956.

Both Carrier and the IBEW deny Petitioner's alleged facts with respect to the manner in which the work in question was accomplished at the M-1 shop, and further cast doubt as to the knowledgeability of the machinists who furnished answers to the questionnaire. Carrier, in its arguments relies in part on two letters written by former employees, both dated in December 1974 after the handling on the property had been completed. Petitioner properly objected to the two documents as being untimely; they will not be considered. The I.B.E.W. in addition to claiming that the work at Oelwein was divided precisely in the same manner as had been done at the M-1 Shop, relies on its Work Classification Rule 115, which provides:

> "ELECTRICIANS' WORK. 115. Electricians' work shall consist of repairing, rebuilding, installing, inspecting and maintaining the electric wiring of generators, switchboards, motors and control, rheostats and control, static and rotary transformers, motor generators, electric headlights and headlight generators, electric welding machines, storage batteries, and axle-lighting equipment; winding armatures, fields, magnet coils, rotors, transformers, and starting compensators. Inside wiring in shops and on steam and electric locomotives, passenger train and motor cars; include cable splicers, wiremen, armature winders, electric crane operators, for cranes of forty-ton capacity or over, and all other work properly recognized as electricians' work."

Carrier contends that the past practice on the property does not support the Machinists' position since the work in question is work on an electrical motor which has always been done by Electricians. Carrier states that it has never been the practice on this property for Electricians to stand aside while Machinists disassemble an electric motor in order that Electricians can then work on the wiring. With respect to the Miami Agreement, Carrier points out that it was not a party to such agreement and further there is considerable doubt that the Agreement was ever recognized by any crafts other than the Machinists and Carmen.

A number of contradictions exist in this dispute. All parties agree that a meeting to discuss the assignment of work involved herein was held in April of 1973, yet Petitioner denies (contrary to the I.B.E.W. and the Carrier) that any understanding was reached. Carrier, while denying Petitioner's argument with respect to the manner in which the work had been done in the M-1 Shop, has presented very little in the way of evidence to support its position. Neither the language in Rule 62 nor the language in Rule 115 unequivocally covers the work in question, although Rule 115 comes closest in our opinion. We are not persuaded by the questionnaires submitted by Petitioner that past practice supports its position, since they were supplied by three machinists about whom we have no information; they may or may not have had any direct information concerning the operations in the M-1 Shops.

We must conclude that the work assignments herein are consistent with, even if not mandated, by Rule 115. Petitioner has not met its burden of establishing proof of past practice which could lead to a contrary conclusion. As we have said on many occasions in the past (see Award 6579 for example) we cannot resolve issues of fact which are unsupported except by conflicting statements. Under all the circumstances herein, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By _____
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of January, 1976.

CARRIER MEMBERS ANSWER TO LABOR MEMBER'S DISSENT

TO SECOND DIVISION AWARDS 6990 & 6991

The proper function of a dissent is to deal with facts of record not certainly to use it as a vehicle with which to cloak disappointment, no matter how ill-conceived, or for the venting of vilification upon a referee simply because the referee was not persuaded by the arguments of the dissenter. The dissent, with such as we are here faced being replete with out of context remarks; arguments not supported by the facts of record in these two cases; assumptions and conjecture; coupled with a personal attack upon the referee involved, lends absolutely nothing to the orderly resolution of disputes which come before this Board. In fact such negative comments as are contained in the instant dissent detract from the professional standards which in the main this Board has adhered to for many years.

Now let us look at the facts upon which the awards are based. The awards in these two cases were based on sound reasoning as the record reveals:

(a) The division of work as between Machinists and Electricians at Oelwein Shops was agreed upon by all parties concerned prior to the instant claims being initiated by the Machinists.

(b) The division of work referred to above was based on the prior practice which existed at M-1 Shop in Chicago before the work was discontinued at that point in 1956. Electricians did it then and properly are doing it now.

(c) The classification of work rule of the Electricians supported Carrier's action not the Machinist's Classification of work rule. This is evident from a reading of the two contracts.

LABOR MEMBER'S DISSENT TO AWARD NO. 6990

DOCKET NO. 6815-T AND AWARD NO. 6991

DOCKET NO. 6819-T

The Referee in Award No. 6990, Docket No. 6815-T, has completely departed from reason in this adjudication which is so frought with errors as to make it a complete nullity.

The majority's twisted logic, incorrect stating of the facts of record, personal assumptions, etc., commence wherein is stated in pertinent part:

> "Petitioner bases its position on the following arguments
> xxxx
> 3. Under the Miami Agreement of February 13, 1958 certain aspects of the work now being performed by Electricians should be performed by Machinists."

The facts of record distinctly show that it was the Carrier and not the Petitioner who entered this agreement into the record. This fact was pointed out to the neutral so by what stretch of the imagination does it now become the Petitioners' position base.

For whatever reason the neutral then chooses to apparently quote the Carrier as holding regarding the Miami Agreement that:

> "Further there is considerable doubt that the Agreement was ever recognized by any crafts other than the Machinists and Carmen."

If this position influenced the neutral (if not so then why quoted), then it is amazing since the International officers of each craft had signed this Agreement with it having been pointed out to the neutral that the first signature was that of the IBEW. Does this neutral subscribe to such an idiotic stance that a party can execute an agreement and then not "recognize" it?

Once this Agreement was entered into the record, then of course, the Petitioner responded to it as support against the Third Party in evidence that they recognized the work in dispute as properly covered by the Machinist Classification of Work Rule.

The next astonishing and preposterous statement occurs in the award dictum in pertinent part:

> "As support for its contentions with respect to the division of the work at the M-1 Shop prior to 1956, Petitioner presented, on the property three completed questionnaires by three unidentified machinists who purported to have knowledge of the work done prior to 1956."
>
> "We are not persuaded by the questionnaires submitted by Petitioner that past practice supports its position, since they were supplied by three machinists about whom we have no information; they may or may not have had any direct information concerning the operations in the M-1 Shops."

These statements were signed by the three machinists and verified by seniority rosters that they worked in and held seniority at this M-1 Shop.

The Carrier, who had work records, seniority rosters, etc., to check with in determining the authenticity of these statements, had this to state in their regard:

> "Admittedly these replies would appear to support the claims."

Only the Third Party, without records backing knowledge, etc., made an offhand unsupported allegation challenging these statements. So again apparently this neutral, who is mandated to be a dealer in facts, accepts unverified "hot air". Apparently this neutral was so predetermined to a denial award that he would have tried to negate any statements supporting the position of the Petitioner even had they been verified by fingerprints and attested to by the Lord.

Other astonishing statements follow:

> "Both Carrier and the IBEW deny Petitioner's alleged facts with respect to the manner in which the work in question was accomplished at the M-1 Shop, and further cast doubt as to the knowledgeability of the machinists who furnished answers to the questionnaires."

> "We must conclude that the work assignments herein are consistent with, even if not mandated, by Rule 115."

Further, to this issue of previous work assignments, the Petitioner was the only party advancing proof through previous work assignments and bulletins. These documents were never refuted by the Carrier and yet not only ignored by the neutral but actually rejected by the above deliberately twisted dictum.

After quoting the Rules, Machinists' Work-62, and Electricians Work-115, it is stated:

> "Neither the language in Rule 62 nor the language in Rule 115 unequivocally covers the work in question, although Rule 115 comes closest in our opinion."

The neutral is consistent with his departure from a professional arbitrator's role of not only being a "dealer in" but a "finder of" facts. After using such positive language as "unequivocally" he then backslides to assumptions and fancies about "closest" as if this were a game of horseshoes which is the only instance where "close" counts. If he had adopted his proper posture then the fact that even the Third Party IBEW executed a written agreement acknowledging this work as properly being covered by Rule 62 would have led to his rendering a sustaining award.

Furthermore, even a cursory review of Rule 115 that it pertains in pertinent part to, "xx electric wiring of xxx motors xxx".

Even being aware that the instant case involved work on ball bearings, the neutral departs from sanity and reason, as the underscoring above portrays, in his personal assumptions related to interpreting these rules. It had also been pointed out that throughout the industry, as well as between the Organizations, bearing work of all types was recognized as Machinist work.

The culmination of this hodgepodge of twisted logic, distorted facts, and personal assumptions was:

"Petitioner has not met its burden of establishing proof of past practice which could lead to a contrary conclusion. As we have said on many occasions in the past (see Award 6579 for example) we cannot resolve issues of fact which are unsupported except by conflicting statements. Under all the circumstances herein, the claim must be denied."

This record portrays that throughout the handling of this case on the property the Third Party IBEW declined to meet, answer correspondence, etc., and in general "laid in the weeds" even through the Board's procedures of exchanging submissions although they were recipient of a proper Three First J notice upon the case being docketed. Then they changed posture by submitting a rebuttal as:

"Dear Mr. Paulos:
Now that we have seen the submissions of the parties, we are an interested party in the dispute and submit the following" xxx

While recognizing the rights of a Third Party, this was nevertheless sharp and the allegations advanced could only be responded to in panel discussions as was pointed out to the neutral. Their unsupported allegations were thereby refuted but for reasons of his own the neutral seemingly subscribed to everything advanced by the Third Party. This is not an assumption but a regrettable fact partly evidenced even by the neutral wherein is stated:

"Carrier, while denying Petitioner's argument with respect to the manner in which the work had been done in the M-1 Shop, has presented very little in the way of evidence to support its position."

Although understated, it had been repeatedly pointed out to the neutral that the Carrier had actually presented nothing factual to support its position. This seemingly undue and untoward Third Party influence certainly does nothing to illuminate demanded arbitrator attributes of impartiality and independence.

A "Code of Ethics for Arbitrators" was printed in the American Arbitration Journal, published by the American Arbitration Association, Inc., and sets forth the views of the Association on the impartiality, independence, personal and public responsibilities of Arbitrators, the powers which they exercise, the requirements of the office, and elements of the ethical code which they should observe. It is stated therein in pertinent part:

> "* * * The element of independence is satisfied when he arrives at his decision by his own free will. He should sedulously refrain from any conduct which might justify even the inference that either party is the special recipient of his solicitude or favor. The oath of the arbitrators is the rule and guide of their conduct."

In Award No. 6991 this neutral holds that:

> "Since the circumstances in this dispute are identical with those in Award No. 6990 this claim must also be denied."

Although acknowledging that a different work item was in dispute, this further exemplifies the inexplicable attitude of comparing "apples and oranges" which in any case doesn't come out of his "witches brewpot" as "wiring".

We believe the referee, for reasons of his own, was grasping vainly for an excuse to deny these cases irrespective of common sense, knowledge of the railroad industry, and to say the very least has attempted to cause irreparable damage to Machinist Rule 62. Certainly common sense would show that roller bearing and support bearing cap work has nothing whatever to do with wiring. The evidence of record proves what a travesty of justice has been committed by the majority in not sustaining the organization's claim. The referee has accomplished nothing other here than to add further chaos to the industry.

The findings and conclusions of the majority are palpably erroneous, and to which we vigorously dissent.

G. R. DeHague
Labor Member

CARRIER MEMBERS ANSWER TO LABOR MEMBER'S DISSENT

TO SECOND DIVISION AWARDS 6990 & 6991

The proper function of a dissent is to deal with facts of record not certainly to use it as a vehicle with which to cloak disappointment, no matter how ill-conceived, or for the venting of vilification upon a referee simply because the referee was not persuaded by the arguments of the dissenter. The dissent, with such as we are here faced being replete with out of context remarks; arguments not supported by the facts of record in these two cases; assumptions and conjecture; coupled with a personal attack upon the referee involved, lends absolutely nothing to the orderly resolution of disputes which come before this Board. In fact such negative comments as are contained in the instant dissent detract from the professional standards which in the main this Board has adhered to for many years.

Now let us look at the facts upon which the awards are based. The awards in these two cases were based on sound reasoning as the record reveals:

(a) The division of work as between Machinists and Electricians at Oelwein Shops was agreed upon by all parties concerned prior to the instant claims being initiated by the Machinists.

(b) The division of work referred to above was based on the prior practice which existed at M-1 Shop in Chicago before the work was discontinued at that point in 1956. Electricians did it then and properly are doing it now.

(c) The classification of work rule of the Electricians supported Carrier's action not the Machinist's Classification of work rule. This is evident from a reading of the two contracts.

(d) The burden of proof to show a rule violation which was upon the Machinists' was not sustained by them by presentation of any competent evidence.

(e) The statements of former Carrier Supervisors who had knowledge of the division of work at old M-1 Shop in Chicago prior to its closing conclusively indicated that the work in case belongs to Electricians not Machinists.

(f) The reliance upon the so-called Miami Agreement by the Machinists as evidenced by their remarks in their rebuttal statement was ill-taken since that Agreement was never consummated with the Carrier.

This writer could set down other weaknesses in the Machinist' union position but it would serve no useful purpose here as that union simply failed to prove that it had a valid claim to the work in case.

The awards in case are sound, being based on fact and well accepted principles in this industry. This writer will not dignify by written refutation, any implication that the Referee indulged in any degree in unethical practice since the facts of record relied upon by the Referee in arriving at his decisions "speak" otherwise.

The referee should be commended for his able handling of a difficult problem.

W. B. Jones

G. M. Youhn

P. C. Carter

G. L. Naylor

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6991
SECOND DIVISION Docket No. 6819-T
2-C&NW-MA-'76

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

(a) The Chicago and North Western Transportation Company violated Rules' #6-29-53-62 when they arbitrarily assigned Machinist work to Electricians when they established a new traction motor shop at Oelwein, Iowa Shops on August 24, 1973.

(b) The Union requests the company to assign this work in accordance with the Machinist Special Rules #62 to pay Dale Erickson, Machinist, and all others cited herein, L. Lofty, J. Crawford, T. Roberts and D. Ohl, 8 hours at the pro rata time and one-half rate of pay until the carrier corrects this instant violation as this is a continuing claim.

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 dispute involves precisely the same parties agreements and issues which were considered in Award 6990 relating to the Oelwein, Iowa facility of Carrier. The only distinction to be made is that in the instant case Petitioner is claiming the work of "checking, measuring and fitting the support bearing caps", rather than the work of removal and replacement of armature ball bearings, on traction motors. Since the circumstances in this dispute are identical with those in Award 6990 this Claim must also be denied.

A W A R D

Claim denied.

Award No. 6991
Docket No. 6819-T
2-C&NW-MA-'76

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 **23rd day of January, 1976.**