Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7036
SECOND DIVISION Docket No. 6725-T
2-B&O-MA-'76

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: ( District Lodge No. 29, International Association of Machinists and Aerospace Workers
( The Baltimore and Ohio Railroad Company

Dispute: Claim of Employes:

1. That under the Controlling Agreement as amended, the Carrier damaged Machinists J. P. Arnold and C. T. Welsh, when they applied a void Agreement dated April 13, 1961.

2. That accordingly the Carrier be ordered to compensate the Claimants, for all wage loss, vacation rights, Hospital, Surgical and Death Benefits as provided for under Policy GA-23000, pass priviledges and all other benefits provided by the existing agreements from the date of October 18, 1972, until recalled.

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 waived right of appearance at hearing thereon.

Claimants were the regularly assigned Machinists at Carrier's Connellsville Shops, Connellsville, Pa. On May 23, 1972, Carrier served notice on System Federation No. 30 (representative of Machinists and Electricians at Connellsville) that in accordance with the provisions of the April 13, 1961 Memorandum of Agreement Carrier intended to abolish the four regularly assigned Machinists positions and the three regularly assigned Electrician positions at Connellsville, and in lieu thereof, they were going to establish four mechanics positions to be designated by System Federation No. 30. System Federation No. 30 replied that of the four positions to be retained, the Machinist and Electrician crafts had been awarded two positions each by the Executive Committee of System Federation No. 30. Subsequently, on October 11, 1972, Carrier abolished the seven positions and readvertised four new positions and issued furlough notices to the two junior Machinists and the junior Electrician. The instant claim was filed on behalf of the two Machinists.

It is the Organization's position that the April 13, 1961 Agreement, relied on by the Carrier in abolishing claimants' positions, is null and void inasmuch as it was abrogated by the September 25, 1964 Agreement, Mediation Agreement, Case No. 7030. They contend that Article III of the September 25, 1964 Agreement was violated when Carrier unilaterally assigned work coming under the Machinist Classification of Work Rule to another craft, viz. the Electricians. The Organization further avers that since each of the four mechanics assigned as of October 11, 1972 performs all work on his shift regardless of Classification of Work Rules, Article IV of the September 25, 1964 Agreement was also violated.

From the evidence at hand, this Board is compelled to conclude that the April 13, 1961 Memorandum of Agreement was legally operative in 1972 when the changes at Connellsville were agreed to by the Carrier and System Federation No. 30. Section 5 of said Agreement provides that it shall remain in effect until modified or changed in accordance with the provisions of the Railway Labor Act. And Section 6 of the Railway Labor Act specifically mandates that the parties must give at least thirty days' written notice of an intended change affecting rates of pay, rules, or working conditions. Thus, if the Organization desired to amend the provisions of the April 13, 1961 Agreement it was incumbent upon them to do so by giving Carrier at least thirty days written notice of its desire to amend the Agreement. There is no evidence that the Organization ever served such a notice on the Carrier.

Nor can this Board find that the September 25, 1964 Agreement automatically abrogated the provisions of the April 13, 1961 Agreement. It is axiomatic that all Rules mutually agreed to by the parties must be read together and each given full effect unless they are obviously inconsistent with one another. Applying this well established principle to the case at hand, we are unable to conclude that the provisions of the two Agreements are inconsistent. Article III of the September 25, 1964 Agreement pertains to the amount of craft work that can be performed by supervisory employees while Article IV prescribes the procedure to be followed when there is not sufficient work to justify a mechanic of each craft at outlying points. Neither provision is inconsistent with the April 13, 1961 Agreement allowing Carrier to reduce forces such as was done in the instant case. If we were convinced that the Agreements were, in fact, inconsistent then the Organization's argument that no 90 day notice was given by it to retain existing rules on this property might be persuasive. However, this Board concludes that they were not inconsistent and therefore the notice provisions of Article IV are inapplicable.

Moreover, the provisions of the April 13, 1961 Agreement have been utilized by the Carrier and System Federation No. 30 at other points on this property subsequent to adoption of the September 25, 1964 Agreement which clearly evidences the intent of the parties that they considered the provisions thereof legally binding irrespective of the September 25, 1964 Agreement.

The foregoing reveals that the Organization was a party to the April 13, 1961 Agreement in 1972 when the Carrier consolidated forces at Connellsville and are bound by the provisions thereof. The claimants were furloughed consistent with that Agreement and their claim that they are entitled to all wages lost as a result of said furlough is devoid of support and must, consequently, 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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of April, 1976.

LABOR MEMBER'S DISSENT TO

AWARD NO. 7036, DOCKET NO. 6725-T

The Findings of the majority in Award No. 7036 are grossly in error and thereby do violence to the spirit and intent of the September 25, 1964 Agreement as well as the Schedule Agreement provisions relating to the Organization.

The majority states in pertinent part:

> "From the evidence at hand, this Board is compelled to conclude that the April 13, 1961 Memorandum of Agreement was legally operative in 1972 when the changes at Connellsville were agreed to by the Carrier and System Federation No. 30. Section 5 of said Agreement provides that it shall remain in effect until modified or changed in accordance with the provisions of the Railway Labor Act. And Section 6 of the Railway Labor Act specifically mandates that the parties must give at least thirty days' written notice of an intended change affecting rates of pay, rules, or working conditions. Thus, if the Organization desired to amend the provisions of the April 13, 1961 Agreement it was incumbent upon them to do so by giving Carrier at least thirty days written notice of its desire to amend the Agreement. There is no evidence that the Organization ever served such a notice on the Carrier."

This is an astonishing statement coming right after the previous paragraph wherein the majority stated:

> "XX the September 25, 1964 Agreement, Mediation Agreement, Case No. 7030 XXX." (underscoring supplied)

Mediation Agreement Cases certainly do not come about by "osmosis" or "immaculate conception". The majority was aware that the September 25, 1964 Agreement evolved from a Section 6 notice to "revise and amend all existing Agreements xxx." Now to say that the April 13, 1961 Agreement could only be revised by a Section 6 notice and the Organization did not pursue this course is self evidently preposterous and not factual.

The majority then continues into a discourse on an allegation that in any event the provisions of the two Agreements are not inconsistent. A comparison of the two agreements readily shows the fallacy of such distorted reasoning. The 1961 Agreement allows the Mechanic on duty at designated points to perform work of all shop crafts on his shift. The September 25, 1964 Agreement in contrast states in pertinent part:

Article III - Assignment of work

> "None but Mechanics or apprentices regularly employed as such shall do Mechanics' work as per the special rules of each craft except foremen at points where no Mechanics are employed." (underscoring supplied)

Article IV - Outlying Points

> "At points where there is not sufficient work to justify employing a mechanic of craft, the mechanic or mechanics employed at such points, will so far as they are capable of doing so, perform the work of any craft not having a mechanic employed at that point." (underscoring supplied)

The conflict in language between these two agreements is self-evident to any logical unbiased mind. The majority seemingly suscribed to the respondents' "mumble jumble" about shifts. This comparison of "apples and oranges" is negated by the explicit language above stating that at points where a mechanic of any certain shop craft is employed then nobody can perform the work of that craft except him. So shifts have nothing whatever to do with this clear unambiguous restriction and the performance of work on any shift and all shifts at that point is governed by the September 25, 1964 Agree

ment. Any other previous agreement in conflict, such as the 1961 Agreement, was clearly superceded and negated.

The majority further concludes that since the provisions of the 1961 Agreement had been utilized subsequent to the 1964 Agreement that this carried some connotation of recognition that the 1961 Agreement was still effective. This majority was well aware of Board holdings, was even furnished many of them, to the effect that past practices bear no weight whatever in the face of clear unambiguous rule language. The only way that the provisions of the 1961 Agreement could have been retained was through the pertinent language in the 1964 Agreement stating:

> "Existing rules or practices on individual properties may be retained by the Organizations by giving a notice to the Carriers involved at any time within 90 days after the date of this Agreement."

Nowhere in the entire record could anyone even allege that such a notice had been orally advanced, let alone produce a written documentation that it had. The majority somewhat petutantly concedes this as:

> "XXX If we were convinced that the Agreements were, in fact, inconsistent then the Organizations argument that no 90 day notice was given by it to retain existing rules on this property might be persuasive xxx."

For some unexplainable reason the majority seemed to be grasping vainly for excuses, rather than factual reasons to deny this claim beyond logical conclusions for doing so. The facts of record unrefutably show that the provisions of the two agreements are

certainly inconsistent, that no proper notice was given to retain the earlier agreement provisions, and therefore only the provisions of the 1964 Agreement are controlling.

The functions of a neutral under the Railway Labor Act is to allay, alleviate and settle and resolve labor strife. In this unwarranted and incorrect attempted rewriting of the 1964 Agreement, not only has prior precedents of this Board been ignored, but the end result has been to depart from the above concept by actually increasing labor strife to the extent that the Organization is being forced to resort to the Railway Labor Act to remedy this bastardization of their rules. Any majority that imagines that this, or any other Organization, will allow others to decide whether we can perform work reserved to us by written contract, is plainly "out of their collective skulls."

The evidence of record before this Board proves beyond any doubt that a travesty of justice has been committed by the majority. The same evidence of record unrefutably portrays that the findings and conclusion of the majority are palpably erroneous, and to which this vigorous dissent is directed.

G. R. DeHague

George R. DeHague
Labor Member