Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7373
SECOND DIVISION Docket No. 7281-T
2-SCL-SM-'77

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. January 28, 1975 Foreman R. L. Ham assigned Machinist L. C. Carpenter to install water pipe on diesel locomotive unit 1703.

2. That the Carrier be ordered to compensate Sheet Metal Worker W. L. Carswell for two (2) hours and forty (40) minutes at time and one-half rate of pay.

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.

The instant claim arose on January 28, 1975 at Uceta Shop (Tampa, Florida) when Carrier assigned to a machinist the installation of water pipe on a diesel locomotive.

Seaboard Railroad represents the merger on July 1, 1967 of the former Atlantic Coast Line and Seaboard Air Line Railroads. The Uceta Shop was a facility of the former Atlantic Coast Line.

The Sheet Metal Workers maintain that the Carrier's work assignment violates Rule 85, the Sheet Metal Workers' Classification of Work Rule, and Rule 26, reserving mechanics' work to mechanics or apprentices "as per special rules of each craft". The Organization contends that its members have historically performed such work and that the Machinists' Classification of Work Rule makes no reference to the removal of water pipes or water lines.

Petitioner cites that the Shop Superintendent denied a claim by the Machinists for this work on the ground that the Sheet Metal Workers had

historically done the work in question. The Superintendent's decision was reversed, and the work assigned to Machinists by the Assistant Vice President of Equipment on the ground that the work was, through error, performed by Sheet Metal Workers.

The Machinists have also filed an ex parte submission claiming that although the Sheet Metal Workers did the work at issue on the Seaboard, members of the machinists' craft have performed such work on the Atlantic Coast Line RR. The current dispute arose at the Uceta Shop, a facility of the Atlantic Coast Line.

The assignment of jurisdiction over the disputed work to the Sheet Metal Workers on the Seaboard Air Line RR stems from a jurisdictional award (No. 674) signed by both Organizations in 1954. That Award provides that, on the Seaboard, "removing and applying all water pipes in connection with the cooling system on Diesel engines is sheet metal workers' work," and that the understanding was "to apply only on this railroad and not to be considered or used as a precedent affecting any other railroad."

Following the merger of the two lines on July 1, 1967, the parties signed a Letter of Understanding on December 20, 1967 pertaining to assignment of work and practices that existed prior to July 1, 1967. Paragraph 2 thereof provides:

> "When the consolidated agreement becomes effective, it is therefore agreed that where conflicts exist regarding specific items of work in the classification of work rules of the new agreement, /a new working agreement for the merged Company/ no changes in the practices of performing such work that were in conflict prior to the merger will be made by the Company until such conflicts or jurisdictional disputes are settled."

Paragraph 4 provides, in part:

> "The organizations will present to management their proposals for settlement of such conflicts or disputes, and the management will accept any reasonable proposal...."

In brief, the December 20, 1967 Letter of Understanding requires the carrier to continue work practices on the former properties until conflicts in work practices are resolved between the crafts and negotiated with the Carrier to be applied.

Efforts to resolve the differences between the two Organizations have proved unsuccessful.

On September 25, 1957, the question of jurisdiction over the disputed work was submitted by the General Chairman of both Organizations on the Atlantic Coast Line to their respective International Presidents for "consideration and disposition", because they could not settle the matter. The joint submission included as a Statement of Fact: "Work is now performed by machinists." No action was apparently taken by the repsective International Organizations on this joint submission.

Following the filing early in 1975 of the claim before us, the Sheet Metal Workers' General Chairman on November 24, 1975, requested the Machinists' General Chairman to join in requesting the Carrier to apply Award No. 674, dated July 19, 1954, "uniformly throughout the Seaboard Coast Line system."

On July 20, 1976, the Machinists' General Chairman offered to join the Sheet Metal Workers in submitting the unresolved dispute on the former ACL and Award 674 to their International Organizations to resolve the issue as to which craft would perform the work on a systemwide basis.

On October 20, 1975, the Sheet Metal Workers served a Section 6 notice on the Seaboard Coast Line RR to remove themselves from the provisions of the December 20, 1967 Letter of Understanding.

The Carrier and the Sheet Metal Workers settled the Section 6 notice by a Letter of Agreement dated May 12, 1977, which provides, in part, as follows:

> "In event conflicts or disputes covered by the December 20, 1967 Letter of Understanding cannot be satisfactorily resolved in accordance with the provisions of the December 20, 1967 Letter of Understanding, you may progress the involved grievances to the Second Division, NRAB, a Public Law Board or a Special Board of Adjustment on the basis of merit without reference to the December 20, 1967 Letter of Understanding being used against you provided you have in good faith complied with all provisions thereof, including submitting your proposal for resolving the dispute or conflict.
>
> It is understood this Letter of Understanding in no way alters the provisions of the December 20, 1967 Letter of Understanding as it applies to the Sheet Metal Workers International Association or any other party signatory thereto."

The situation thus resolves itself to the Sheet Metal Workers performing the work on the former Seaboard (to which Award 674 applied), with the Machinist doing the work on the former Atlantic Coast Line. As indicated above, the Uceta Shop, where the instant claim was filed, was part of the ACL RR. Petitioner's rebuttal to the IAM submission lists shops in which the Sheet Metal Workers do the work; other shops in which the disputed work is done by the Machinists, and one shop (Waycross, Georgia) where both crafts have performed the work.

It is clear that a jurisdictional dispute eixsts between these two crafts. Both crafts claim to have performed the disputed work in the past and that the work is reserved to their respective crafts by the Classification of Work Rules. The joint submissions to their respective International Presidents, or proffers to re-submit such joint submissions; requests by one of the Organizations to the other to request the Carrier to apply Award 674 on a systemwide basis--furnish ample evidence of a jurisdictional conflict which is still unresolved. The Petitioner's submission also indicates the lack of uniform practice on the Carrier with respect to the disputed work; at one location cited, both crafts have performed the work. Both crafts filed ex parte submissions in support of their respective claims.

The May 12, 1977 Letter of Agreement between the Sheet Metal Workers and the Carrier cited above cannot be made retroactive to this instant case, which was filed early in 1975.

The 1967 Letter of Understanding between Petitioner and Machinists requires the Carrier to maintain the status quo as to work assignments and practices in effect prior to July 1, 1967, the date of the merger, until the jurisdictional dispute is settled between the contending Organizations. According to this Understanding, the Carrier may not reassign the work, absent agreement between the two Organizations. The transfer of work from one craft to another can only take place after negotiations and agreement, not only between the two competing Organizations, but also between them and the Carrier.

No such agreement has been reached in this case.

The Letter of Understanding was valid and operative at the time the claim was filed. The Letter contains no provision which allows a signatory party to by-pass its requirements for mutual agreement and accommodation before work assignments (and jurisdiction) can be changed. No exceptions are provided in the event, as in this case, the parties fail to reach agreement. This Board has no authority to add to or to alter the Understanding reached between the contending parties. That is the province of the parties.

Both the petitioner (Sheet Metal Workers) and the Machinists claim the right to perform the work which is the subject of the claim presented to this Board. A jurisdictional dispute exists between the two Organizations, which is unresolved. The Letter of Understanding provides for the orderly settlement of jurisdictional disputes. The parties are duty bound to comply with the procedures provided therein.

Under the circumstances, and in view of the clear procedural prescriptions contained within the Letter of Understanding, this Board has no jurisdiction to render a decision on the merits of the claim. Based on the foregoing we will decline to accept jurisdiction over this dispute.

A W A R D

Claim dismissed for lack of jurisdiction.

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 14th day of October, 1977.