Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7471
Docket No. 7233-T
2-BNI-MA-'78

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Burlington Northern Inc.

Dispute: Claim of Employes:

1. Carrier violated Rules 6, 27 and 51 of the Shop Crafts Agreement effective April 1, 1970, when it assigned carmen at Laurel, Montana to machine finish the center plate castings on freight cars with a machine designated as the Freight Master on September 17, 18 and October 3, 1975.

2. Machinist D. Dempster, Laurel, Montana be paid fourteen (14) hours computed at time and one-half the Machinists' rate on September 17, 18 and October 3, 1975.

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 Organization claims work of refinishing center plates attached to freight cars with a device known as the Freightmaster Center Plater Refinisher, at the Carrier's facility at Laurel, Montana. It bases its claim on the provisions of Rules 27 (a) and 51.

Rule 27(a) reads in part:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft..."

Rule 51 reads as follows:

> "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, rachet 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 superheaters, oxyacetylene, 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 a preliminary finding, the Board does not agree that Rule 51 makes specific reference to the work involved. Special note must be taken that the duties listed at the beginning of the rule refer to locomotives and engines, etc. -- but are notably devoid of specific reference to freight cars.

The Carrier points out that an identical dispute arose concerning the same equipment at its St. Cloud facility and, upon declination by the Carrier, was abandoned. Similarly, another dispute was initiated at the Carrier's Havelock facility. When the Carrier proposed that the matter go forward under Rule 93 (discussed below), the dispute was not progressed further.

The Organization claims that the disputes at St. Cloud and Havelock were not advanced because use of the equipment was abandoned, although this is not indicated in the quoted correspondence.

Nevertheless, the results of the St. Cloud and Havelock disputes lend logic and reasonableness to the assignment of use of the Freightmaster equipment to Carmen (the third party at interest here) at Laurel, as it had done at St. Cloud and Havelock. (The Carrier, of course, offers other reasons for its assignment of the work to Carmen as well.)

Rule 93 reads as follows:

> "Any controversies as to craft jurisdiction arising between two or more of the organizations parties to this agreement shall first be settled by the contesting organization, and existing practices shall be continued without penalty until and when the Carrier has been properly notified and has had reasonable opportunity to reach an understanding with the organizations involved.
>
> When new methods or new processes are introduced in the performance of work covered by this agreement and not specifically covered in the special rules of a craft, conference will be held between the General Officers and the General Committee with a view to determine the proper assignment of such work. In the event agreement is not reached management will be permitted to assign employees to perform the work, it being understood that such assignment would in no was establish a precedent or jeopardize the claims of any craft, it being further understood that should agreement later be reached changing the assignment of such work it will not result in any claims against the Carrier."

Applying the first paragraph of Rule 93, it is noted that the Organization corresponded with the Brotherhood of Railway Carmen on the dispute, and the Carmen declined to offer clearance to the Machinists, but instead defended their right to the work. No agreement between the two crafts has been reached.

Applying the second paragraph of Rule 93 -- referring to "new methods or new processes", the Carrier argues that the Organization should go forward on these terms, in lieu of seeking a decision from this Board. The Organization points out that this portion of Rule 93 contemplates a conference between the Carrier and affected crafts prior to assignment of the work, whereas the Carrier went forward at Laurel without such preliminary conference. But, as noted above, this was a reasonable action by the Carrier in view of the precedent at St. Cloud and Havelock.

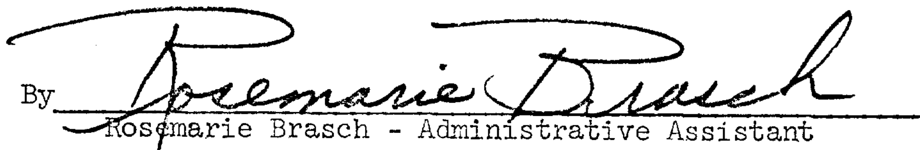
The Board finds that the Organization has not shown that the work involved unequivocally belongs to Machinists under its Classification of Work Rule, nor has it obtained its remedy through Rule 93. Resolution of the dispute by the Board at this point is therefore inappropriate.

AWARD

Claim denied and dismissed.

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 24th day of February, 1978.

LABOR MEMBER'S DISSENT TO

AWARD NO. 7471, DOCKET NO. 7233-T

The facts of record, applicable agreement provisions, and proper precedent Awards of this Division, all portray the defects in this erroneous award.

Since the reasons expressed in the Labor Members Dissent to Award No. 7218 are also applicable to this erroneous decision, that Dissent by reference and attachment is adopted herein.

Further in this instant case even the Carrier acknowledged that the work involved was not covered by the Third Party's class of work Rule. Such as portrayed in their submission in pertinent part:

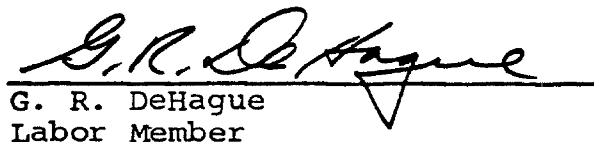
> "Carmen's Rule 83 does not cover the use of the Freightmaster center plate finisher xxx" (underscoring added)

The majority's holding that the provisions of Rule 93, governing work jurisdiction disputes, had not been utilized to obtain our remedy, is just as erroneous as the other findings. This neutral completely, and conveniently, overlooks the fact that the Carrier is also bound by the restraints of the Rule. Both in continuing existing practices and a conference prior to assigning work involving new methods or new processes. Rather than face up to holding the Carrier responsible these findings give comfort and encouragement to the industry in perpetuating these deliberate industry triggered disputes

wherein they are gradually having their way in a desire for bastardization of all the craft rules.

Holding the Carrier also to the restraints of Rule 93 would have continued proven existing practices that whenever this work item had previously been machined it was performed by a machinist and when not machined the repairs were accomplished by the Third Party. The ridiculous holding that isolated temporary practices at two points established any precedent is certainly stretching the imagination. There was absolutely no need for this Organization to pursue claims filed in those instances, since the practice was immediately discontinued there. This was surely an admission by the Carrier of their misassignment.

Award No. 7471 is erroneous and completely lacking in precedential stature.



G. R. DeHague
Labor Member

 LABOR MEMBER'S DISSENT TO AWARD NO. 7471, DOCKET NO. 7233-T