Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8123
SECOND DIVISION Docket No. 7828-T
2-SLSF-MA-'79

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employes:

1. That the St. Louis - San Francisco Railway Company violated the controlling Agreement, particularly Rules 31(a) and 53, when they arbitrarily assigned Carmen to install new cables on Wrecker SLSF 99022.

2. That accordingly, the St. Louis - San Francisco Railway Company be ordered to compensate Machinists Ron Stafford and Ed Whitehead in the amount of sixteen (16) hours' pay each at a Machinist's pro rata rate of pay for damages that they sustained, in that they were denied the right to perform the above described Machinists work.

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.

This claim arose because the Carrier assigned members of the Carmen's Union to remove cables from a locomotive used as a wrecker and to replace them with new cables. This work took place at the Carrier's yard located in Springfield, Missouri. The Machinist's Union claims a violation of its work jurisdiction under Rule 53 of their agreement with the Carrier. The primary contention of the Machinists is that the language of Rule 53 gives them the right to perform work on locomotives, and that it specifically refers to cranes and hoists. The Machinists point to its evidence that it has traditionally performed repair work on wreckers, when they are worked on in the Carrier's yard.

The Carrier contends that the matter is a jurisdictional dispute between Machinists and the Carmen, and that the Board lacks jurisdiction because the Machinists have failed to avail themselves of the jurisdictional dispute resolution machinery of the collective bargaining agreement. Further, the Carrier contends that there is insufficient evidence in the record to meet the burden of proof that the work of repairing wreckers has been exclusively within the jurisdiction of the Machinist's Union. Finally, the Carrier argues that the claim for twice the number of hours required by the Carmen to perform the work in question amounts to an excessive request, and it is, in reality, a penalty.

The Carmen's Union has entered an appearance as a third party, and has submitted an argument claiming that a jurisdictional dispute exists. As does the Carrier, the Carmen contend that the Machinist's failure to invoke the jurisdictional dispute resolution procedure deprives this Board of jurisdiction. Further, the Carmen contend that they have performed repair work on wreckers at various locations within the Carrier's system.

In response to the arguments that there is a jurisdictional dispute, the Machinists contend that no such jurisdictional dispute, within the meaning of the collective bargaining agreement, exists for a number of reasons. Initially, they contend that the clear contract language appearing in Rule 53 precludes the jurisdictional dispute, because the Carmen have jurisdiction only over passenger and freight car work. Secondly, they contend that a jurisdictional dispute does not arise when there is a single instance of an erroneous assignment of work.

Finally, the Machinists contend that any attempt by them to invoke the jurisdictional dispute procedure would have been futile because of the performance of work and claim for the work by the Carmen.

The essential question to be resolved is whether a jurisdictional dispute exists within the meaning of the collective bargaining agreement. Numerous decisions have been cited by the Carrier and the Carmen on the one hand, and by the Machinists on the other hand, for their respective positions. Nevertheless, these well reasoned decisions of many impartial arbitrators do not present an irreconcilible conflict.

The essential distinction to be made from a reading of the many decisions cited by both sides of the argument, concerns itself with the nature of the work performed, as contrasted with an isolated instance of an erroneous work assignment. Thus, those arbitrators who found a jurisdictional dispute, clearly based their conclusion upon the conflicting claims for work of a certain type, or for work that has been newly created as a result of technological innovations.

However, those arbitrators who found that no jurisdictional dispute existed, based their conclusion on the fact that the Carrier made an erroneous assignment of work that was clearly with the jurisdiction of the claiming Union's contractual work language.

Based upon the record in the instant case, the Board concludes that the instant claim involves a situation where the Carrier made an erroneous assignment of the repair work on the wrecker. The record is clear that the Machinists Union members have traditionally performed the basic repair work on wreckers while they are in the Springfield shop. Therefore, no jurisdictional dispute exists.

On the merits of the case, the record reflects that the jurisdiction of the Machinists, is to perform substantial repair jobs on wreckers while the equipment is in the Company's Springfield shop. By contrast, the work of the Carmen, on wreckers, has been for the emergency repairs that were required, to that equipment, on the site of a train wreck, including inspection of the equipment for serious damage that could create an immediate hazard.

Therefore, on the basis of the record, the assignment to Carmen of the replacement of the cables on the wrecker, while it was in the Springfield, Missouri yard, was a violation of the language of Rule 53 of the collective bargaining agreement. Accordingly, Claim 1 is upheld.

However, the second claim of the Machinists, for an award of pay that is twice the amount of the time spent by the Carmen to perform the work, is improper. Although the Machinists claim that a penalty is required to deter future assignments of this nature, that argument is unpersuasive. There is no evidence in the record to sustain a finding that the Carrier made the assignment in bad faith. Therefore, there is no basis to invoke a penalty to deter future assignments of this type. Claim 2 is upheld only to the extent of the payment of 16 hours of wages to the Machinists' Union members.

A W A R D

Claim 1 is upheld. Claim 2 is upheld only to the extent of 16 hours of wages to the Machinists.

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 27th day of September, 1979.