

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers & Helpers
(Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That on April 20, 1978, The Atchison, Topeka and Santa Fe Railway Company violated Rules 36, 63 and 114 of the current controlling Agreement when two (2) employes other than of the Boilermaker Craft were assigned and did perform Boilermakers work for a period of five (5) days each, totaling eighty (80) hours. Accordingly, the Carrier be ordered to additionally compensate Boilermakers, Mike Coyle and Paul Whitlow forty (40) hours each at pro rata rate of pay on account of the above listed violations.
2. In addition to the above listed violations; That the Carrier violated Rule 39 of the current controlling Agreement when it failed to allow the claim as presented after it failed to notify the author of the initial claim in writing of its disallowance of the claim and the reasons thereof, within the specified sixty (60) day time limit.

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 Employes make claim on behalf of certain Boilermakers because the Carrier had work performed by the Machinist's classification; which work dealt with track construction. The Employes insist that the work was properly assigned to them under the controlling agreement.

The Organization has raised an asserted procedural defect; questioning the timeliness of a Carrier reply. However, as we view the record, we are unable to agree that the Carrier failed to abide by the controlling rules.

Concerning the merits of the dispute, we note that the Carrier raised, on the property, the assertion that any dispute such as the one under consideration should be handled under the provisions of Rule 114 of the agreement. It further

contended that the "existing practice" of Machinists performing the work in dispute should be continued - without penalty - until such time as the matter is resolved under Rule 114.

We have noted the Organization's resistance to Rule 114, as expressed while the matter was under review on the property. However, in our view, Rule 114 is rather clear, and specifies a procedure to be followed when this type of a dispute arises. The failure to comply with Rule 114 operates to divest us of the authority to consider the case and issue a ruling on the merits, due to the failure to exhaust the contractually provided remedy:

"RULE 114

Any controversies as to craft jurisdiction arising between two or more of the following Organization: International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; Sheet Metal Workers International Association; International Brotherhood of Electrical Workers and Brotherhood of Railway Carmen of United States and Canada shall first be settled by the contesting Organizations, 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."

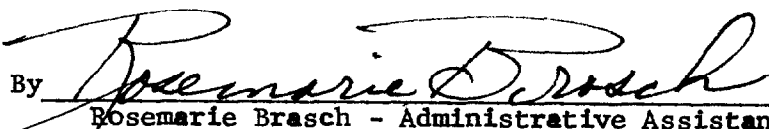
Accordingly, we are compelled to dismiss the claim.

A W A R D

Claim 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 10th day of November, 1981.