Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9484
SECOND DIVISION Docket No. 9164-T
2-MP-MA-'83

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
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1.) That the Missouri Pacific Railroad Company violated the Controlling Agreement, particularly Rule 26(a) as amended by Article III of the September 25, 1964 Agreement; Rule 52(a), but not limited thereto, and Award No. 270, when it denied Machinist Dennison to remove and install an assembled radiator at North Little Rock, Arkansas.

2.) That the Missouri Pacific Railroad Company be ordered to compensate Machinist D. Dennison for four (4) hours pay at the pro rata rate of pay because he was denied the right to perform Machinists' work. This is a continuous claim and the Carrier will make record of any violation and furnish them to the Local Chairman.

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 is a matter involving work jurisdiction. The Sheet Metal Workers International Association was advised of the dispute as a third party at interest, and that Organization filed a response.

The Carrier argues that the matters should be barred from consideration by the Board because of the alleged unavailability of the named claimant to perform the claimed work. Under the circumstances of this dispute, the Board does not agree that the matter should be barred. The issue here is assignment of specific work and requires determination, with remedy for a particular claimant being a secondary issue only.

The Organization and the Carrier are in accord concerning certain aspects of this dispute. On September 18, 1978, Diesel Unit 3051 was located at the 400 Yard Ramp, North Little Rock Yard. The unit was found to have a leaking radiator, consisting of several cooling sections. The work required was to remove

the radiator from the locomotive, locate and repair or replace the leaking core, and return the radiator section to the locomotive. The work of repair and/or replacement of the leaking core is unquestionably Sheet Metal Workers' work.

It is further agreed that jurisdictional Award No. 270, dated March 10, 1948, provided as follows:

> Docket No. 270: "That the removing, dismantling, repairing and reinstalling and maintaining of all radiators used on Diesel locomotives are the duties of the Sheet Metal Workers' craft. This to apply to all points on Missouri Pacific Railroad."
>
> Award No. 270: "The removing and installing of assembled radiators (not to include pipefitting) is machinists' work.
>
> The repairing and assembling of radiators including the application of gaskets and bolting of sections together and all pipefitting in connection with same is sheet metal workers' work."

Finally, it is agreed that absent the later effect of the Incidental Work Rule (to be discussed below), the work of removing and installing the radiator would have properly been assigned to Machinists (the Claimant Organization herein), while the repair and assembly work would have been assigned to Sheet Metal Workers. Thus, no detailed review of the two crafts' classification of work rules is necessary.

What is at issue is the effect of the Incidental Work Rule (Public Law #91-226, 1970) which states:

> "At running repair work locations which are not designated as outlying points where a mechanic or mechanics of a craft or crafts are performing a work assignment, the completion of which calls for the performance of 'incidental work' (as hereinafter defined) covered by the classification of work rules of another craft or crafts, such mechanic or mechanics may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as 'incidental' when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment. In no instance will the work of overhauling, repairing, modifying or otherwise improving equipment be regarded as incidental.

determining the main work assignment concerning the removal."

That situation may be readily distinguished from the instant case, wherein the dispute revolves around both the removal and the repair. The Board does not agree with the Organization that there were two separate main tasks and finds, as noted above, agreement with the Carrier's position.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of May, 1983.

> If there is a dispute as to whether or not work comprises a 'preponderant part' of the work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignments. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work."

In appropriate circumstances, the Incidental Work Rule has been found to modify or supercede existing jurisdictional rules or decisions. See Award No. 6440 (Lieberman), as an example.

In this instance, the contention of the Organization is that the removal and return of the radiator is a "main work assignment", quite separate from the consideration of what may have occurred once the radiator was removed. The Carrier contends that the entire operation was initiated simply because of the damaged radiator and that the repair (or replacement) of the defective section was the only main work assignment, with the removal and return incidental to such work.

Upon review of the record, the Board finds that the removal and return of the radiator was properly considered "incidental" to the repair work and that the criteria specified in the Incidental Work Rule were fully met. Although the Organization argues that the 400 Yard Ramp is not a "running repair work" location, the Carrier offers convincing evidence to the contrary. There is little dispute that the time involved in repair/replacement exceeded that of removal and return.

Added support of the Board's position is found in the uncontradicted evidence set forth by the Carrier on the property that four earlier claims involving the same operation had been advanced by the Organization, but in each instance the denial response of the Carrier had been accepted as the final resolution.

There remains the relevance of the award in Public Law Board No. 840 (Zumas) involving removal of a generator, which the Organization strongly argues is parallel to the instant dispute. In the Public Law Board No. 840 award, however, the dispute was between two organizations each of whom had been assigned by an earlier jurisdictional decision to separate parts of the removal itself. That Award stated:

> "Everyone conceded that the task was to remove the auxiliary generator from atop the main generator and lower it to the floor of the shop. It is also agreed by the Parties that the Board's consideration is limited to that basic task, and that which occurs to the generator after it came to rest on the floor of the ship, such as further movement, repair, etc., is not in dispute in this case and is not to be considered in

LABOR MEMBERS' DISSENT

TO

AWARD NO. 9484, DOCKET NO. 9164-T

Referee Herbert L. Marx, Jr.

The findings in Award No. 9484 read in part:

a) "In this instance, the contention of the Organization is that the removal and return of the radiator is a 'Main Work Assignment,' quite separate from the consideration of what may have occurred once the radiator was removed."

b) "Upon review of the record, the Board finds that the removal and return of the radiator was properly considered 'incidental' to the repair work and that the criteria specified in the Incidental Work Rule were fully met."

c) "Added support of the Board's position is found in the uncontradicted evidence as set forth by the Carrier on the property that four earlier claims involving the same operation had been advanced by the Organization, but in each instance the denial response of the Carrier had been accepted as the final resolution."

d) "Finally, it is agreed that Absent the Later effect of the Incidental Work Rule (to be discussed below), the work of removing and installing the radiator would have properly been assigned to Machinists (the Claimant Organization herein), while the repair and assembly work would have been assigned to Sheet Metal Workers. Thus, no detailed review of the two crafts' classification of work rule is necessary."

Thus it has been established that the Majority understood exactly what this dispute was based upon: (a) "A Main Work Assignment."

However, from there on is where understanding and rationality parted company in relation to the factors (or lack thereof) upon which this completely unreasonable and irrational determination was finalized.

Item (d) above, the Majority confirms its understanding that the work in dispute "removing and installing the radiator" is Machinists' work, but, then applied its totally misguided concept of the applicability of the Incidental Work Rule to "Main Work Assignments" as a means of supporting its totally untenable determination. For example, the Majority stated:

> "In appropriate circumstances, the Incidental Work Rule has been found to modify or supercede existing jurisdictional rules or decisions. See Award No. 6440 (Lieberman) as an example."

there is absolutely no support in Award 6440 for the Majority's statement that the Incidental Work Rule modifies or supercedes existing jurisdictional rules or decisions relating to a "MAIN WORK ASSIGNMENT." Quite the contrary, Mr. Lieberman, in Award 6440 stated:

> "We find that the Incidental Work Rule did modify the implementation of Rule 97 as well as other jurisdictional agreements - - - - -. The question then remains as to whether the Carrier correctly applied that rule. - - - - -. There is no dispute that the removing of the air compressor from the locomotive was Machinists' work. The record reveals little substansive evidence but much rhetoric concerning the relative work involved in the various tasks. We are not disposed, therefore, to disturb the supervisory decision that the main task was that of the machinists and the claimed work was incidental to that task."

therefore, it is documented that Award 6440 did not address the issue of "dual main work assignments," as his decision was based on his determination that little substantive evidence existed in the record upon which he could rely to address that issue. His decision was strictly on the applicability of the Incidental Work Rule as it relates to "the removal and replacing or the disconnecting and connecting of parts and appliances

such as wires, piping, covers, shielding and other appurtenances (accessories) from or near the Main Work Assignment in order to accomplish that assignment, and, therefore, lends no support to the findings of the majority in Award No. 9484.

Item (b) above, the majority further states in support of its findings that "the criteria specified in the incidental work rule were fully met," and, therefore, "the removal and return of the radiator was properly considered Incidental." However, the majority offered no foundation upon which to support this declaration and, therefore, standing alone, without substance, is untenable.

On the other hand, the employees fully addressed the criteria of the Incidental Work Rule during the on-property processing of this dispute with the Carrier and in its submission to the Board, (See Employees Exhibit "P" and pages 7, 8, and 9 of its submission) fully supported with substantial documented evidence, yet ignored by the majority in this instant award.

Item (c) above, seeking further straws to grasp in support of its determination, the majority referred to alleged "uncontradicted evidence" as set forth by the Carrier on the property that four (4) earlier claims involving the same operation had been advanced by the Organization, but in each instance the denial response of the Carrier had been accepted as the final resolution.

This causes the employees to really wonder if the majority actually studied the record. There exists in the record no "uncontradicted evidence" as alluded to in the findings. Quite the contrary. Support for this position of the employees is found in Exhibits I-1, L-2, and P-4, the submission, page 6, and in the Agreement itself in pertinent part:

> Rule 31(b) - - - - -, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances.

thus, it was factually established in the processing record and in the employees submission that the withdrawal of previous claims by the employees

was without prejudice to its contention that the Agreement was violated by the Carrier. Merit considerations of the processing, etc., was the basis upon which the decision to withdraw was determined and not that the denial response of the Carrier was accepted as the final resolution. The mere fact, among others, that the employees continued to come back with other claims, four (4) in all up to this point, demonstrates the matter was never settled.

Page six of the Employees Submission:

> "And, it is the first claim processed on the applicability of the Incidental Work Rule to a Main Work Assignment."

the basic issue was spelled out not only in the Employees' Submission, but throughout the entire on-property processing, "the applicability of the Incidental Work Rule to a Main Work Assignment."

In addition to the fallacious conclusions of the majority specifically addressed above, the employees now confront the absolutely twisted logic attempted by the majority to excuse the applicable support to the employees position by the relevance of the Award of Public Law Board No. 840.

In its submission on page 6 the Employees stated:

> "The facts giving rise to this instant dispute rest on "ALL FOURS" with the facts giving rise to the dispute in Public Law Board No. 840 and as such the employees have, from the outset of this dispute on the property, depended upon the proceedings of Public Law Board No. 840 for support of its position on jurisdictional Award No. 270 and the Agreement. Because of the absolute similarity of this instant dispute with the dispute settled by Public Law Board No. 840, this Honorable Board's attention is directed to Employees' Exhibit S-1 through S-13 to be read as if references to Auxiliary Generator from Diesel unit 6178 were Radiator Assembly from diesel unit 3051. That Decision No. 115 between the I. A. of M. and the I.B.E.W. be read as decision No. 270 between I. A. of M. and the Sheet Metal Workers International Association, - - - - -."

and it is apparent that this was not done by the majority.

Public Law Board No. 840 - Question at issue, (Exhibit S-3) - "Did the Company violate "Jurisdictional Decision No. 115" - - - - - when it required machinists to perform certain work which I.B.E.W. claims belongs to the Electrical Craft?" "If so, was such action authorized, permitted and/or allowed by the 'Incidental Work Rules' included in Public Law 91-226?"

Using the substitution method as requested by the employees, especially on Exhibits S-8 through S-13, absolutely no other conclusion could have logically been reached other than the Carrier violated the Agreement and the employee's position is sustained.

> S-10: b. Main Work Assignment
> "Because a "Main Work Assignment" may not be performed by another craft under the Incidental Service Rules, the ultimate Board determination then must rest on a determination of ownership of the "Main Work Assignment" under Decision #270."

Carrier agreed with the employees that since the acceptance of Decision #270 in 1948, until its application of the Incidental Work Rule to this work in 1970, that machinists removed and installed locomotive radiator assemblies. There is no question that the removal and installation of a radiator assembly is a Main Work Assignment and that the Incidental Service Rule does not, under any circumstances, transfer "Main Work Assignments" away from the craft to which it belongs.

Removal and installation of locomotive radiator assemblies has been recognized as a Main Work Assignment belonging to the machinist craft for over twenty two (22) years, calculated from date of Decision #270 until the introduction of the Incidental Work Rule. The Agreement also supports the fact that the purpose of the Incidental Work Rule was not to take away or transfer Main Work Assignments from craft to craft, by its very definition contained in the Agreement:

> " - - - - -, the completion of which calls for the performance of 'incidental work' (as hereinafter defined) - - - - -. Work shall be regarded as 'incidental' when it involves the removal and replacing

> or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the Main Work Assignment in order to accomplish that assignment."

Further defined, the Agreement specified what is meant by "removal and replacing or disconnecting and connecting parts and appliances:"

> "Wires, piping, covers, shielding, appurtenances (accessories)

Never did the framers of this Rule ever intend or envision the transferring of Main Work Assignments from craft to craft or the use of cranes and lifting eyes and slings, etc. in the removal of "wire, piping, covers, shielding, and appurtenances from or near the Main Work Assignment. In this instant dispute, as the employees specifically demonstrated, the radiator assembly was not near anything on which a Main Work Assignment was being performed or was it from anything on which a Main Work Assignment was being performed. But, that the removal and installation of the radiator assembly is a Main Work Assignment, Incidental to absolutely nothing.

Additional support for the employee's position was before the majority in Employee's Exhibit S-9 wherein is quoted the testimony of the Chairman of the Carrier's National Railway Labor Conference before the U.S. House of Representative's Committee on Interstate and Foreign Commerce; that a basic purpose of the rule was that such a provision would:

> ". . . . eliminate the present practice of having high-priced mechanics standing around waiting for other high-priced mechanics to be brought from other locations simply to disconnect a wire or replace a bolt."

He described the Rule in the following terms:

> "The Incidental Service Rule referred to provides that when a mechanic is performing a task, a main task of overhaul, repair or modification, he may when capable of doing so, do such work as removing, replacing, connecting or disconnecting parts and appliances, such as wires, piping, covers, shielding,

> and other appurtenances from or near his Main Work Assignment, in order to accomplish that assignment, even though such incidental work includes work usually done by another craft.

The Award of the majority in this instant dispute bears no similarity or resemblance to the language of the Rule or the stated purpose of the Rule.

Award No. 9484 is another classic example of the bastardization by a neutral of an agreement reached under the most difficult of collective bargaining processes, to which either through ignorance or indifference is imposed his personal brand of pride of authorship.

Award 9484 dismisses entirely the existance of more than one "Main Work Assignment" in a "work assignment" and provdes for the transferring of Main Work Assignment from craft to craft. By carrying this illogical conclusion to its ultimate application, we would eliminate "Incidental" and insert "composite," ending up with "Composite Work Rule which was not the intent of the framers of the Rule. EXAMPLE: THE LOCOMOTIVE IS OUT OF SERVICE BECAUSE THE CRANKSHAFT IS DAMAGED AND MUST BE REMOVED, REPAIRED, AND REPLACED. THE MAIN WORK ASSIGNMENT IS TO REPAIR THE DAMAGED CRANKSHAFT, THUS, ALL WORK NECESSARY TO BE PERFORMED RELATIVE TO THE REMOVAL OF THE CRANKSHAFT IS INCIDENTAL. SINCE THE REMOVAL AND INSTALLATION AND REPAIR OF CRANKSHAFTS IS MACHINISTS' WORK AND THE PREPONDERANCE OF THE WORK IN TIME CONSUMED IS MACHINISTS' WORK, THEN ONLY MACHINISTS NEED TO BE ASSIGNED TO PERFORM ALL THE WORK NECESSARY TO COMPLETE THE ASSIGNMENT. RIDICULOUS? NOT SO IN ACCORDANCE WITH AWARD 9484, IN PERTINENT PART:

> " - - - - - the dispute revolves around both the removal and the repair. The Board does not agree - - - - - that there were two separate main tasks - - - -."
> Claim denied.

This writer could go on and on tearing apart the illogical conclusions that resulted in this majority decision. What has been concluded as the result of the majority's findings transcends the bounds of human credulity to understand how, based on the record before the majority, such a conclusion could have been reached.

Suffice it to say that insofar as the Incidental Work Rules is concerned, the once proud and beautiful pure maiden has been deboutched and degraded, raped and re-raped until now there is no resemblance to the original creation. Award No. 9484 is but another rape and most likely will not be the last. The line of eager participants appears never ending, hopeless in fact, because the maiden is now so vulnerable, many return for yet another score.

The purpose of the Adjustment Board is to settle disputes, not create them. Award 9484 has settled absolutely nothing. It is poorly reasoned, untenable, palpably erroneous and to which this vigorous and unalterable vehement dissent is registered.

Robert J. McCarthy
Labor Member, Second Division