

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United
(States and Canada, A.F.L. - C.I.O.
(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That the Soo Line Railroad Company violated Rules 28, Par. 1, and 94 of the Shops Craft Agreement on June 25, 26 and 27, 1980, when the Soo Line allowed the Boilermakers into the Car Shop to cut out and reweld ends of tank cars, Soo X640 and X639.

2. That the Soo Line Railroad Company be ordered to compensate Carman K. Gerner, M. Kielman, R. Zangel, W. Knueppel & J. Smet, for eight (8) hours each at time and one half at Carmen's rate of pay for Soo Line Railroad's violation on June 25, 26 and 27, 1980.

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 employes 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 Claimants, Carmen Kenneth Gerner, Michael Kielman, Richard Zangel, William Knueppel and John Smet, are employed at the Carrier's North Fond du Lac, Wisconsin Car Shops. The claim relates to repairs made to tank cars S00 X-639 and S00 X-640 in May and June of 1980. These tank cars were in Bunker "C" oil service, and were to be converted for use as water tanks for the Engineering Department. The tanks were steamed for 24 hours by laborers in the roundhouse at Fond du Lac. Boilermakers then removed the heater flues. In the case of Soo X-640, Carmen cut out one end of the tank before Boilermakers made claim for this work. Boilermaker employees proceeded to cut out the other tank end. Upon the completion of sandblasting and painting work by Carmen, Boilermaker employees welded in the tank ends on both cars. Carmen performed the repairing of hand rails, running boards, and brackets, air brakes, draft gears, couplers, yokes and attachments, and truck repairs on both cars.

The Carmen's Organization contends that the Carrier violated the Rules 28 and 94 of the Agreement when it assigned Boilermakers to the above described work. The Carmen contend that an oil tank car is a freight car under Rule 94; and when it is conditioned to carry water, it is still a freight car, and it is Carmen's work to build, maintain and dismantle freight cars. The Carmen contend that the work in question has historically been performed by Carmen on this property.

The Boilermakers' Organization contends that Rule 55, the Boilermakers' Classification of Work rule grants Boilermakers the exclusive contractual right to build and repair tanks, including all welding necessary to accomplish this work.

The Carrier contends that it properly made the assignments in this case. The Carrier further contends that the controversy is a jurisdictional dispute and the Carmen have presented no evidence that the Carmen have settled the jurisdictional dispute in accordance with the agreed-upon procedures.

We have studied the positions of the Carmen, Boilermakers and the Carrier, and we are compelled to conclude that the instant claim is a jurisdictional dispute. We find that no part of Rule 94 specifies tanks or tank cars as Carmen's work. We point out the above for the limited purpose of rejecting the Carmen's position that no jurisdictional dispute exists in this case. In fact both the Carmen and Boilermakers' Organizations claim that their rules and practices give them exclusive right to such work. This Board cannot and does not take a position on the merits of this jurisdictional dispute between the Carmen and Boilermakers. The Carmen, the moving party in this dispute before this Board, have not demonstrated to the Board that the jurisdictional dispute has been settled in accordance with the agreed-upon procedures set forth below. The pertinent part of the June 20, 1949 Agreement between the Shop Crafts and Carrier to which both Organizations are signatory states:

"We have an agreement between the various Shop Craft Organizations dated February 15, 1940 which we agree is the only means by which jurisdictional disputes between two or more crafts shall be handled and, when agreement is reached, same will be presented to management for its consideration."

The February 15, 1940 Agreement contains the following pertinent language:

"Effective from this date, we, the undersigned, agree that no general chairman, or other officer, representative or member of any of the organizations signatory hereto, will individually request management to take work from one craft and give it to another craft.

We further agree that we will find a way to reach an agreement and settle any disputes that may arise between any two crafts signatory hereto, involving jurisdiction of work, and when such dispute has thus been settled, then request will be presented to management for conference to negotiate the acceptance by management of the settlement thus made."

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We reiterate that we take no position on which labor organization should be assigned the work in question, and the matter must be settled by the above set forth procedures. We are compelled to dismiss this claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984