

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: ( Sheet Metal Workers' International Association  
(  
( Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That the Louisville and Nashville Railroad Company violated the controlling Agreement, particularly Rule 87, when on or about January 15 through 18, 1980, General Car Foreman F. E. Byrd assigned Carmen D. C. Jackson and J. H. McCrary the duties of cutting welding pipe and sheet metal with and making thirty (30) Blue (sic) Flags, Boyles Shops, Birmingham, Alabama.
2. That accordingly the Louisville and Nashville Railroad Company be ordered to compensate Sheet Metal Workers C. L. Rollins and L. M. Nation eight (8) hours each at the pro rata rate of pay for such violation.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 argues that when Carrier assigned two carmen to build about 30 blue flags, it violated Rule 87 of the Sheet Metal Workers' Controlling Agreement. The disputed work was performed between January 15, 1980 and January 18, 1980. The Organization contends that this work was properly recognized as sheet metal workers' work and asserts that Carrier has offered no proof that carmen performed this work. It submitted numerous letters from sheet metal workers and employees from other crafts who attested that sheet metal workers performed this work at Boyles Shop, Birmingham, Alabama.

Carrier contends that the fabrication of blue flags has been performed by carmen, machinists and sheet metal workers, and asserts that this work is not exclusively performed by members of the sheet metal craft. It argues that carmen have constructed blue flags at Birmingham, Alabama, and avers that in this instance the particular flags were made with angle iron on the bottom and obsolete A.C.I. labels at the top with the pipe in between. It observes that the angle iron and labels were materials not exclusively used by sheet metal workers. Moreover, it maintains that the Organization failed to comply with the craft jurisdictional dispute resolution procedures set forth in Appendix A of the controlling Agreement.

The Carmen as an interested third party filed a response with the National Railroad Adjustment Board wherein it asserted that blue flags have historically been built by carmen at the South Louisville Shop and at other points on Carrier's property from time to time including the Boyles Shop at Birmingham, Alabama. It argues that this work is generally recognized as carmen's work and avers that Rule 113 of the Carmen's Agreement specifically refers to the use of blue flags. It contends that since blue flags are tools integral to the work of carmen who must display them for protection, it logically follows that carmen should build and maintain their own tools.

In our review of this case, we agree with Carrier that Appendix A of the Letter Agreement of October 31, 1949 is applicable to this dispute. The claim before us is in reality a jurisdictional dispute between two crafts who are pointedly asserting work exclusivity and both crafts are signatory parties to the aforesaid agreement. Since this Board has followed this interpretative application in several prior cases involving the same Carrier and the same Organization with respect to analogous type exclusivity claims, we believe it is best and consistent with the parties' own jurisdictional disputes settlement accord to dismiss this claim. Appendix A requires that when two signatory organizations claim the right to perform work, the contesting crafts shall reach an agreement and resolve existing disputes before submitting any claims to the Carrier. This procedure has not been complied with in this case and it would be contrary to our past decisional holdings if we require an alternative disposition. As we stated in Second Division Award No. 6765:

"We cannot ignore valid and legally operative agreements entered into in good faith by the parties, notwithstanding subsequent changes in alliances and allegiances. In the instant case, such an agreement contemplates the submission of such dispute to attempted mutual resolution among the Organizations involved with conference negotiation with management for acceptance of such inter-organizational settlement. We find that the instant dispute is referable properly to the resolution machinery established by Appendix A of the Agreement and is prematurely before our Board for adjudication pursuant to the provisions of Section 3, First (i) of the Railway Labor Act, as amended, and Circular No. 1 of the National Railroad Adjustment Board."

Form 1  
Page 3

Award No. 10050  
Docket No. 9336-T  
2-L&N-SMW-'84

Accordingly, in view of this pertinent decision and the virtual identical nature of the dispute herein, we are compelled to follow our prior rulings. The principle of Res Judicata is applicable here. (See also Second Division Award Nos. 8271, 6825 and 6778)

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 29th day of August 1984.