Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11035
SECOND DIVISION Docket No. 10048-T
2-DM&IR-MA-'86

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Duluth, Missabe and Iron Range Railway Company

Dispute: Claim of Employes:

That under the current agreement the Carrier improperly assigned to Employes other than Machinists, at its shop in Proctor, Minnesota, the fabrication of a wheel lifting device for the Niles Wheel Boring Machine. This work was performed by members of the Blacksmiths craft on or about March 1-2 and March 15-16, 1982, at the Carrier's direction.

That the Carrier accordingly compensate Machinist A. E. Parendo for 16 hours at the straight time rate of pay and Machinist B. S. Larson for 16 hours at the overtime rate of pay for failure to assign to them the aforementioned work reserved to Machinists by the controlling agreement.

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.

Claimants are Machinists at Carrier's Proctor, Minnesota, Wheel Shop.

According to the record, in late 1981 or early 1982, Carrier installed a new table apparatus to a Niles Wheel Boring Machine. The design of the new table required Carrier to fabricate and install two (2) grasping fixtures or "arms" which are used to position wheel blanks for machining.

On March 1, 2, 15 and 16, 1982, Carrier assigned the fabrication and installation of the new lifting or grasping fixtures to members of the Blacksmiths' Craft. The Organization filed a Claim on March 1, 1982, alleging improper assignment of the aforestated work in violation of the Machinists' Classification of Work Rule 45 which, in pertinent part, reads as follows:

> "Machinists' work shall consist of laying out, fitting, adjusting, shaping, ... and grinding of metals used in building, assembling, maintaining, dismantling, and installing ... hoists ... tools and machinery ... and other shop machinery ... tool and die making ... oxyacetylene, thermit, and electric welding on work generally recognized as Machinists' work, ... and all other work generally recognized as Machinists' work."

Pursuant to the filing of the instant Claim, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, (IBBB) intervened as a Third Party. As per Rule 51 of the Controlling Agreement, the IBBB's work jurisdiction is as follows:

> "Blacksmiths' work shall consist of welding, forging, heating, shaping, and bending of metal, tool dressing and tempering, spring making, tempering and repairing; potashing, case and bichloride hardening, flue welding under blacksmiths' foreman, operating furnaces, bulldozers, forging machines, drop-forging machines, bolt machines, and Bradley hammers; all welding or building up of frogs, switch points, crossovers, puzzle switches and low rail joints; hammersmiths, drop hammermen, trimmers, rolling mill operators; operating punches and shears doing shaping and forming in connection with blacksmiths' work, oxyacetylene, thermit and electric welding on work generally recognized as blacksmiths' work, and all other work generally recognized as blacksmiths' work."

The Organization's basic position in this controversy is that the fabrication of the "lifting device(s)," namely such job tasks as fitting, adjusting and grinding of the metals used in their construction, is without question work which is contractually reserved to the Machinists' Craft, as per Rule 45. Carrier and intervener, however, disagree; and raise a threshold question of work jurisdiction in their argumentation. Accordingly, Carrier and intervener argue similarly that the instant Claim is prematurely before this Division because the Organization, in its progressing of this case, has failed to first utilize the work jurisdiction dispute resolution mechanism which is specified in Work Rule No. 41 of the Parties' Controlling Agreement. Said Work Rule reads as follows:

"Jurisdiction

Any controversies as to craft jurisdiction arising between two or more of the organizations who are parties to this agreement 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.

When new methods or new processes are introduced in the performance of work covered by this agreement, which are not specifically covered in the special rules of a craft, conferences will be held between the local officers of the Carrier and the local committees of the crafts involved with a view to reaching an agreement on proper assignment of the work. Pending an agreement between the parties involved, management will be permitted to assign employes to perform the work, it being understood that such assignment of the work will not establish a precedent, or be prejudicial to the claims of any craft to the work, and it being further understood should an agreement later be reached which changes the assignment of such work, such agreement will not result in any claims against the Carrier."

The Organization, however, challenges Carrier's and IBBB's characterization of this Claim as a work jurisdiction dispute by asserting that their Classification of Work Rule 45 so clearly describes the work involved in the instant Claim that a jurisdictional question cannot possibly exist.

Unfortunately for the Organization, this Board perceives that the intervener has posited an equally persuasive claim to the disputed work based upon their Classification of Work Rule 51. In such situations, the well established policy of this Board is to defer decisions on unresolved work jurisdiction disputes where the parties have established independent, expedited settlement procedures such as Rule 41 (Second Division Award No. 8319).

In the instant case, we are faced with a situation where two Crafts claim the same work. This dispute, therefore, is jurisdictional (Second Division Award No. 7712). Since this dispute involves a question of work jurisdiction, Rule 41 of the Controlling Agreement requires the Petitioner and the Third Party intervener to first attempt resolution between themselves before presenting the Claim for adjustment with the Carrier. The record is devoid of any attempt whatsoever by the Organization to first resolve the jurisdictional question with the Blacksmiths' Craft in the manner prescribed in Rule 41. Consequently, this Claim is procedurally defective and must be dismissed.

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 15th day of October 1986.