

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11837
Docket No. 11562-T
90-2-88-2-28

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(Northeast Illinois Railroad Corporation

STATEMENT OF CLAIM:

The Northeast Illinois Railroad Corporation, now known as METRA, hereinafter referred to as the Carrier, violated the provisions of the current and controlling agreement, in particular Rule 77, when they improperly assigned other than Sheet Metal Workers to dismantle 16 gauge sheet steel from passenger coaches numbered 301, 305, 385 and 364 at the Carriers' Western Avenue Coach Yard on the dates of January 29, 1987, February 10, 1987 and February 11, 1987.

THAT ACCORDINGLY THE CARRIER BE ORDERED TO:

Compensate Sheet Metal Workers D. Balestri, D. Hill, T. Nazario and L. Washington, hereinafter referred to as the claimants, in the amount of eighteen (18) hours pay, at the straight time rate, equally divided among the claimants and further it is requested that the claimants be compensated for equal time on subsequent dates that the violations occur until corrected and that a check of the records be made to determine the amount of time due on subsequent dates.

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.

In early 1985 Carrier began changing 12 x 2 foot letter boards on the sides of its commuter cars. It assigned the removal and replacement work to members of the Carmen's craft. Work on the first coach, No. 302, began on March 22, 1986. Sheet Metal Workers initiated a Claim contending that the work of attaching letter boards, in this instance 16 gauge stainless steel, was exclusively theirs under its Agreement. That Claim remained unadjusted on the property, was referred to this Board, whereupon it was sustained in Second Division Award 11688.

The Claim in this Docket, filed on March 6, 1987, involves the removal, by Carmen, of letter boards from Coaches Nos. 301, 305, 364 and 385, commencing January 29, 1987.

In both Claims the Carmen's Division, TCU, filed a Third Party brief contending that the work involved was properly assigned to its Craft under its Agreement.

Petitioner urges that we follow Award 11688 and sustain this Claim. Carrier, argues that Award 11688 is in palpable error for several reasons. First it contends that the dispute before the Board in Award 11688 involved a jurisdiction of work matter between Sheet Metal Workers and Carmen and as such it was required to be handled as provided in the April 8, 1948, Memorandum of Agreement, reading in part:

"It is agreed that in connection with the Schedule Agreements which become effective September 1st, 1949, the following Memorandum of Agreement dated April 8th, 1948 will continue in effect without charge: . . .

If any craft makes a claim for work now being done by another craft and an agreement is reached between the two crafts, such agreement will be submitted to Management by the System Federation, and Management will be asked to accept that agreement as an interpretation of the classification of work rules of the crafts involved. Until this is done, no work is to be transferred from one craft to another.

that each craft, represented by the parties signatory hereto, will continue to perform each item of work they have been performing under the Agreement of December 15th, 1926 and any claim made by another craft for any item of work will be handled by the two

crafts. If an agreement is reached between the two crafts, such agreement will be submitted to the Chief Mechanical Officer, or his representative. It is understood that no work will be transferred from one craft to another until the procedure outlined above has been followed and Management has agreed to accept any agreement that may be made between the two crafts with regard to transfer of work from one to the other."

The dispute before us is clearly a jurisdictional dispute between Sheet Metal Workers and Carmen. The Carmen were assigned the work and claim it is theirs under its Agreement. Sheet Metal Workers contend that the work should have been assigned to its Craft under its Agreement. Award 11688 recognized that both the Carmen and the Carrier contended that the matter was a jurisdictional dispute, however, it did not comment, thereafter, on that issue.

We are reluctant to not follow Awards between a particular Carrier and a particular Organization which resolve an earlier matter identical in fact and substance to the issue we have under review, because one of the most basic principles of any Board established pursuant to the Railway Labor Act, as expressed in Third Division Award 4569, written without a neutral, is understood to be:

"... One of the basic purposes for which this Board was established was to secure uniformity of interpretation of the rules governing the relationships of the Carriers and the Organizations of Employees. To now add further fuel to the preexisting conflict in or decisions upon this subject would only invite further litigation upon the subject and would be contrary to one of the basic reasons for the existence of this Board."

However, when a jurisdictional issue is recognized in the Award we are asked to follow, but is left dangling, (and we have an identical jurisdictional issue in the matter before us), exceptions to res judica must obtain because we may not have jurisdiction to get to the merits of the matter in the first place.

As noted above, Award 11688 recognizes that a jurisdictional dispute issue was raised by the Carmen and the Carrier, but the language of the Award ignores the matter thereafter. Contrast this with the result reached in Award 11658, adopted one month before with the same Referee participating, wherein it was decided:

"Considering the full record, this Board will dismiss the Claim. Dismissal is mandated when this Board is confronted with a jurisdictional dispute and dispute resolution procedures have not been complied with (Second Division Awards 11486, 11364, 11229, 11070, 11035). Appendix 10 on Jurisdictional Dispute Procedures clearly applies to these parties and requires that when a dispute involving jurisdiction of work arises between crafts, the Organizations will resolve the dispute. Herein, there is no evidence that the Organization followed Appendix 10. Accordingly, the Claim must be dismissed."

In another Award adopted the same date as Award 11658, Award 11657, the Board stated:

"Under the Railway Labor Act this Board's jurisdiction is limited and it cannot consider issues over which it lacks appropriate authority. Jurisdictional issues may be raised at any time and by any party (Second Division Award 8293). This Board does not find that Rule 126(a) of the Agreement encompasses the disputed work and, therefore, this is a jurisdictional dispute (Second Division Award 11035). As such, this dispute has not been handled under the jurisdictional procedures as embodied in Supplement No. 6 and must, therefore, be dismissed as procedurally defective (Second Division Awards 11486, 11473, 11364, 11229, 11070.)"

In the case before us it is manifest that a jurisdictional dispute exists over the work involved. Petitioner was told by Carrier, when this matter was being handled on the property, that it was seeking work which Carrier considered to be Carmen's work. This clearly classified the matter as a jurisdictional Claim. Petitioner did not elect to resort to the procedural requirements of the April 8, 1948 Memorandum of Agreement which must be utilized when "... any craft makes a claim for work now being done by another craft"

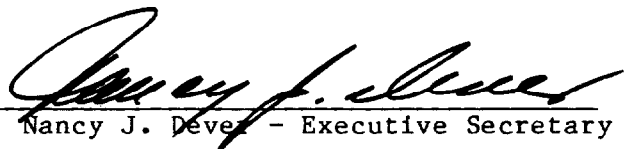
Resort to such procedures are mandatory in jurisdictional claims, accordingly, we are left with no alternative but to dismiss the Claim before us as procedurally defective. See Second Division Awards 11472 and 11486.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devez - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1990.

—

—

—

LABOR MEMBER'S DISSENT TO
AWARD NO. **11837**, DOCKET NO. 11562-T
(REFEREE FLETCHER)

The Majority grossly erred in a Decision inconsistent with the Agreement and the various awards cited by the Employees, particularly recent Award No. 11688 pertaining to the identical subject matter.

This decision is in error for two reasons. It disregards the evidence of record, especially the provisions of Rule 77 which clearly encompasses the work in question, and it totally disregards the principal of stare decisis.

Concerning the principal of stare decisis, the Divisions of the National Railroad Adjustment Board have stated in previously rendered Awards:

Third Division Award 24547: ". . . we do not think it is proper for the Board to issue conflicting awards involving the same provisions of the same agreement between the same parties."

Second Division Award 9234: "It would be illogical and inconsistent with the time honored doctrine of stare decisis for us to relitigate that issue here, predictability and consistency, which are of value to all concerned, would be destroyed."

Fourth Division Award 3443: "Whether phrased in terms of 'res judicata' 'stare decisis' or any other legal terminology, the fact remains that the best ends of labor-management relations are served by a basic predictability of Awards, especially when a dispute involves the same parties, same rules and same basic evidence."

In this instance the majority has failed to recognize the provisions of Rule No. 77 of the Agreement.

It is inconceivable to conclude that the provisions of Rule 77 stating:

"Sheet Metal Workers' work shall consist of tinning, coppersmithing, and pipefitting***on passenger coaches and engines ***erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter"

does not in itself support the sustaining of a similar claim.

This decision has erroneously disregarded the applicable agreement provisions as determined by prior awards making this a palpably erroneous award and should be so recognized.

Bruce J. Coppett

Labor Member

Mark Filipovic

Labor Member

Don D. Harst

Labor Member

Ronald E. Kawalski

Labor Member

Labor Member

Labor Member

CARRIER MEMBERS' RESPONSE
TO
LABOR MEMBER'S DISSENT
TO
AWARD 11837, DOCKET 11562-T
(Referee Fletcher)

In Award 11688 of this Board, we find the following:

"The Carrier maintained that...the April 8, 1948 Memorandum of the Agreement on jurisdictional procedures had been violated."

"The Brotherhood of Railway Carmen entered a Third Party submission arguing...the Claim was a jurisdictional dispute and should be dismissed for failure to follow Agreement procedures...."

"The Board finds that the disputed work is covered by Rule 77 and...is generally recognized as Sheet Metal Workers work. As such, no jurisdictional dispute exists."

In our Dissent to that Award we pointed out:

"Here, the Majority, by failing to abide by the dictates of the parties, has exceeded its jurisdiction...."

and we referred to recent Second Division Award 11658 which properly concluded:

"Dismissal is mandated when this Board is confronted with a jurisdictional dispute and dispute resolution procedures have not been complied with (Second Division Awards 11486, 11364, 11229, 11070, 11035)."

In Award 11837, we find the following:

"The dispute before us is clearly a jurisdictional dispute between Sheet Metal Workers and Carmen. The Carmen were assigned the work and claim it is theirs under its Agreement. Sheet Metal Workers contend that the work should have been assigned to its Craft under its Agreement. Award 11688 recognized that both the Carmen and the Carrier contended that the matter was a jurisdictional dispute, however, it did not comment, thereafter, on that issue."

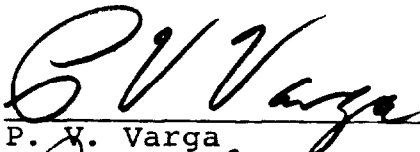
"As noted above, Award 11688 recognizes that a jurisdictional dispute issue was raised by the Carmen and the Carrier, but the language of the Award ignores the matter thereafter."

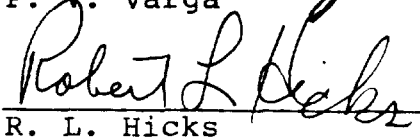
"In the case before us it is manifest that a jurisdictional dispute exists over the work involved. Petitioner was told by Carrier, when this matter was being handled on the property, that it was seeking work which Carrier considered to be Carmen's work. This clearly classified the matter as a jurisdictional Claim. Petitioner did not elect to resort to the procedural requirements of the April 8, 1948 Memorandum of Agreement which must be utilized when '...any craft makes a claim for work now being done by another craft....'

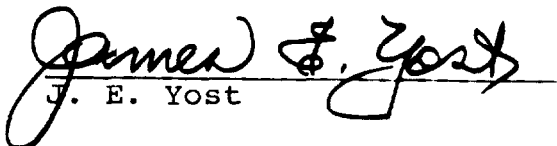
Resort to such procedures are mandatory in jurisdictional claims, accordingly, we are left with no alternative but to dismiss the Claim before us as procedurally defective. See Second Division Awards 11472 and 11486."

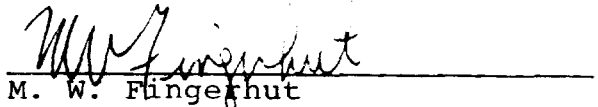
Dissenters contention that the Board here ignored the, "provisions of Rule 77...and...the principle of stare decisis." However, both Awards 11688 and 11837 recognized that there was a dispute among the crafts and that the parties themselves had provided a specific means to resolve such matters on the property. Award 11688 ignored the specific agreement of the parties in this regard. Award 11837 simply noted that the prior decision recognized this requirement but left it "dangling". It also noted, with substantial precedent, that such MATTERS MUST BE DISPOSED OF IN ACCORDANCE WITH THE SPECIFIC AGREEMENT ON THE PROPERTY before any party had a right to progress the matter to an outside forum.

Had Award 11688 properly applied the clear language the parties specifically provided for the prompt and orderly resolution of such matters, then there would have been no need for Award 11837, the Organization's Dissent or this Response.


P. V. Varga


R. L. Hicks


J. E. Yost


M. W. Fingerhut


M. C. Lesnik