

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU  
(CSX Transportation, Inc.  
(The Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "carrier") violated the provisions of Rules 7 and 154 of the Shop Crafts Agreement between Transportation Communications International union -- Carmen's Division and the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) and the service rights of Carmen R. Cales and W. Fannin (hereinafter "claimants") when the carrier utilized persons other than Carmen to perform Carmen's work.

2. That, accordingly, the claimants are entitled to be compensated for four (4) hours each at the applicable Carmen's rate.

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 basic facts of this case are set forth as follows:

On March 30, 1989, a Foreman instructed two employees of the Sheet Metal Craft to straighten the grating supports and the grating in the blow-off area of the Paint Facility. Said facility is located at Carrier's Raceland, Kentucky Car Shops. According to the initial claim filed on April 7, 1989, the Foreman allegedly stated to the Sheet Metal Workers that he knew the work belonged to the Carmen craft, but he still had to instruct them to perform "this repair." The Organization contends the work performed was protected under the Agreement, specifically Rules 154 and 7 and thus a claim was submitted for four hours at the applicable rate for the two Claimants herein.

In response Carrier contended that said work did not exclusively accrue to the Carmen and denied the claim. The Local Chairman appealed this denial by letter dated June 13, 1989. He noted in part:

"Contrary to your statement, this work is strictly accrued to the Carman craft. Moreover, the Carrier knows this due to the fact of Supervisor Newman stating such. Furthermore, Sheet Metal Workers Craft is restricted to metal 10 gauge and lighter as per Agreement Rule 126(A)."

The General Chairman reiterated these same argumentative points in his August 30, 1989 appeal, but the claim was again denied by Carrier's Director of Labor Relations. In his April 28, 1990 denial the Director stated:

"I have reviewed the facts as set forth in the response from Plant Manager Brigman to the Local Chairman and must agree that there has been no Agreement violation in this case. The work complained of does not belong exclusively to Carmen and you have offered no proof, to meet your burden in such a claim, that it does. Members of several crafts, in fact, perform maintenance duties in the Paint Shop as required. This claim is, therefore, declined for these reasons."

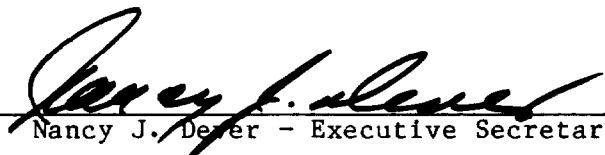
In its Ex Parte Submission Carrier maintained that a comparative analysis of the Carmen's and Sheet Metal Workers' Classification of Work Rules (154 and 126 respectively) shows that the specific work at issue here is not mentioned in either Rule, and thus a jurisdictional dispute is present. It argued that it was not estopped from first raising a jurisdictional issue at the Board level of the appeals process and cited Board authority for this position. Since Supplement No. 6 provides a definitive procedure for handling jurisdictional disputes among the Shop Crafts, Carrier asserted the Organization should have first resorted to this dispute resolution process.

In considering this case, the Board concurs with Carrier's jurisdictional position. In the absence of hard evidence such as unambiguous protective contract language in the Carmen's Classification of Work Rule (Rule 154) or a persuasive fully documented showing of systemwide past practice, or an unequivocal affirmation by the Sheet Metal Craft that such work indisputably belonged to the Carmen's Craft, the Board, of necessity, must find that a jurisdictional dispute exists and it is not impermissible under our decisional authority for Carrier to raise this issue at the Board level. (See Second Division Award 11708 between the Parties.) The Sheet Metal Workers advised the Board that it was not filing a Third Party Submission, but it did not waive this work. The matter should have been first handled in accordance with the dispute resolution procedures of Supplement No. 6. We will dismiss the 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 29th day of April 1992.