Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13485
Docket No. 13297
00-2-97-2-71

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and Aerospace Workers
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"1. That the Kansas City Southern Railway Company violated Rule 44 and others of the controlling agreement between the Kansas City Southern Railway Company and its employees represented by the International Association of Machinists and Aerospace Workers when supervision of the Company wrongfully and unjustly mis-assigned the Machinists' work of inspecting and servicing Coal Train Locomotive Consists to the Carrier's Joint Agency in Kansas City, Missouri to Train Crews. Under the Agreement this work properly belongs to members of the Machinists' craft. D

2. The Claimants in the instant dispute are all actively employed Machinists on the seniority roster at the Joint Agency. They are:

C. D. Palmer	J. L. Jarvis	R. L. Vaughn
J. D. Coleman	J. L. Schulze	D. W. Dourty
F. Drone	D. S. Ester	P. Russell

3. Accordingly, for this violation of the Agreement the Machinists request that for each day and on each shift this violation occurs that the Claimants, in order of availability, be payed a "call" of 4 hours' pay at their pro rata rate of pay as provided for under the provisions of Rule 6. The Organization has kept records of the frequency of this violation from the first occurrence. We further request that the work be properly returned to the Machinist craft."

"Dispute - Claim of Employee:

That the Kansas City Southern Railway Company (hereinafter referred to as the "Carrier") violated Rule 44 and others, of the Controlling Agreement, as amended, between the Kansas City Southern Railway Company and its Employees KCS - IAMAW, Coal Train Insp. Represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the "Organization") when they wrongfully and unjustly mis-assigned the Machinists work of inspecting and servicing of Coal Train Locomotive Consists from the Machinists Craft at the Carrier's Joint Agency in Kansas City, Missouri to the Train Crews. The Claimants in this instant dispute are all the actively employed Machinists on the seniority roster at the Joint Agency.

They are:

C. D. Palmer	J. L. Jarvis	R. L. Vaughn
J. D. Coleman	J. L. Schulze	D. W. Dourty
F. Drone	D. S. Ester	P. Russell

Accordingly, for this violation of the Agreement we request that for each day and on each shift this violation occurs, the Claimants, in order of availability, be payed a "call" of 4 hours pay at their pro rata rate of pay as provided for under the provisions of Rule 6. The Organizations has kept records of the frequency of this violation from the first occurrence.

We further request that the work be properly returned to the Machinist craft."

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 employee 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 were given due notice of hearing thereon.

The origins of the instant case center on a bulletin issued on September 29, 1995 by the Carrier which assigned the work of inspecting and servicing of coal train locomotives at Kansas City, Missouri to train crews. The bulletin stemmed from an agreement between KCS and BN to handle the interchange of coal trains between the BN and KCS yards at Kansas City. According to this bulletin, cited here in pertinent part:

> "KCS and BN have entered into an agreement that allows a 'step-off', 'step-on' interchange of unit coal trains from BN-KC to KCS-KC. This agreement will expedite the movement of unit coal trains, thereby reducing cycle of time of trains and providing an improved service to our utility customers. . . ."

As of October 1, 1995, this agreement between KCS and BN dispensed with the brake test at Kansas City (air brake inspection & tests, and fueling of locomotives were to be performed by BN at Lincoln, Nebraska) and eliminated the changing of engines of run-through unit coal trains at Kansas City. As of October 1, 1995, according to the Carrier, crews would be ". . . changed in the yard without disturbing the train or the locomotives. . . ."

On November 22, 1995 and thereafter the Local Chairman of the Organization at Kansas City filed 152 individual claims with the Mechanical Supervisor at Kansas City, Missouri. The claims all alleged a violation of Rule 44 of the operant Agreement. The claims specifically charged KCS with improperly assigning the servicing of coal train locomotives to another craft at KCS-KC whereas this work belonged to the Machinists. According to the claims the work at a bar had been done by Machinists at KCS-KC since ". . . June 1988 when Laborers (had been) furloughed. . . ."

There are two issues raised at different points in this case which deal with time-limits and with merits. The Board will address these points sequentially.

First of all, the Board will rule on the procedural issue of time-limits. The Board observes, after studying the voluminous record before it, that after the 152 individual claims had been filed, all of which addressed specific alleged violations on specific coal trains and engines which took place on specific dates starting on October 1, 1995 an agreement was reached, in the conferencing of these claims on the property between the Organization and the Carrier. Apparently the motivation for this agreement was to introduce economies of scale on both sides: rather than have claim after claim individually filed, denied, appealed and so on both sides agreed to treat the issue at bar as one alleged, continuing and ongoing violation of the same agreement provision by the same recurring work done by train crews after the Carrier issued its September 29, 1995-bulletin. The agreement between the parties in this respect was the following. According to the Organization, ". . . prior to the appeal (of the denial of the claims) it was mutually agreed by the respective parties to designate the claim as a 'continuing claim' for ease of handling. . . ."(Emphasis added). Obviously, this agreement between the parties, which neither side denies took place, also amended the claims and created the basis for the ongoing controversy thereafter between them, which is documented in the record, with respect to alleged time limit violations. The mutual agreement between the parties during their on-property handling of the original claims, after the fact of their filing, converted the individual claims into a continuing claim. This agreement also created confusion with respect to each parties' understanding of the original date of filing of the claims. As a result, the fundamental basis for any conclusion by the Board about alleged time-line violations remains obscure. The agreement between the parties about the nature of the claim(s) has created an irreconcilable dispute between them over facts. By long and abundant precedent this Board has eschewed resolution of such controversies and it will do so here again (Third Division Awards 20053, 23834, 26200, 26428; Fourth Division Award 3201). The Carrier's arguments, in its Submission, that a subordinate officer did not have proper authority to agree to the change of the substance, in effect, of the claims from individual to a continuing claim on grounds that this officer had no ". . . authority to change the meaning of the labor contract . . ." is misplaced. That officer's actions led to no change in the meaning of the contract albeit did lead to challenges related to the interpretation of the contract. Lastly, the Board observes that the Statement of Claim before it, as framed by the Organization when this case was docketed before the NRAB, does not even contain reference to a time limit violation although both it and the Carrier discuss this longum et latum in their Submissions. As a final determination on these matters, the Board concludes that it is more than a matter of protocol for this Board to limit its rulings, under authority given to it by Section 3 of the Railway Labor Act, only to those issues explicitly laid out before

it in parties' Statements of Claim (Third Division Awards 28529, 28533, 28995 inter alia.).

The Board now turns to the merits of the case. In its argument when originally filing the claims the Organization states that the work at bar at Kansas City is not listed in Rule 44 of the operant Agreement. Claim for jurisdiction over the work rests, therefore, on the Organization's reliance on prior practice.

The issue raised here by the Organization is not one of first impression. In the absence of clear language support for a claim of the type at bar in the instant case the Organization must show that the work has been ". . . historically and exclusively . . . performed by . . . Machinists system-wide . . ." in order to prevail. In this respect, the Board notes that the Organization itself successfully argued as much in a case dealing with work jurisdiction off the CSX in 1991 (Second Division Award 12120). Other Awards from this Division, consistent with the principle upheld in Second Division Award 12120, have also held that the burden of proof in rules' claims, in cases such as the instant one, require showing of ". . . exclusivity of system-wide . . ." practice (Second Division Awards 6867, 2255, 13011 inter alia.).

A review of the evidence of record in this case fails to persuade the Board that the Organizations has properly met its burden in this case. There is evidence that Machinists have performed the work in question at the Kansas City location but information of record provided by the Carrier, which is not rebutted, shows that operating crafts have done work of the type at other locations on this property. In view of this the claim(s) cannot be sustained. The Board will rule accordingly.

Additional issues raised in this case, such as the controversy over statement of the request for relief, and whether this Board has the authority to return the work to the craft, need not be addressed here in view of the Board's ruling on merits.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of April, 2000.