

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32142  
Docket No. CL-31209  
97-3-93-3-68**

**The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.**

**(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc. (former Seaboard Coast  
( Line Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Organization (GL-10922) that:**

- 1. Carrier violated the Agreement(s) when, on October 10, 1991, it contracted the repair and rebuilding of parts of stacker/reclaimer sprocket segment to outside contractor, known as EME, work which has historically been performed by Phosphate Engineers at Rockport Terminal.**
- 2. Account of violation listed above, Carrier will compensate the Senior Available Employee, unassigned and in preference, one (1) day's pay at Phosphate Engineer's rate.**
- 3. Proper Claimant to be determined by a joint check of the Company's records.”**

**FINDINGS:**

**The Third 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.

Carrier maintains a phosphate ship loading facility at Rockport, Florida. Rail cars are unloaded onto a conveyor belt feeding a stacker/reclaimer machine which removes the phosphate from the belt and stores it in bins. The sprocket on the stacker/reclaimer deteriorates over time and requires repairs and retrofitting. It is not disputed that prior to claim date of October 10, 1991, Phosphate Engineers represented by the Organization and covered by the TCU Agreement, repaired and rebuilt the sprocket by removing it from the stacker/reclaimer, welding in the sprocket grooves, using a template to build the weld to specifications and grinding after each pass to finish the job. According to the Organization, this process usually occupied two Phosphate Engineers for 16 hours.

On October 10, 1991, Carrier arranged for a contractor, known as EME, to perform the repair/rebuilding of stackrack sprockets, using a Machinist and an oven which maintained a temperature which kept the metal pliable throughout the repair. When the District Chairman became aware of the matter, he submitted a claim alleging that Carrier violated Clerical Agreement Scope Rule 1, when it contracted the repair and rebuilding of parts of the stacker/reclaimer sprocket segment, asserting that work had been "historically" performed by TCU represented Phosphate Engineers. The District Chairman requested one days's pay to "the senior available employee."

Carrier denied the claim, premised initially upon grounds the Organization had failed to "name a proper claimant." Additionally, Carrier asserted that the Organization had failed to submit required evidence in support of its contention that such work is exclusive to Agreement-covered employees, either on a system-wide basis, or at the facility in question.

*Additionally on the merits of the issue, Carrier stated that:*

**"The inadequate repairs being made by the phosphate engineers to the sprockets previously resulted in numerous repairs and downtime to the phosphate reclamation process.**

As a result, Carrier needed a high quality repair which it could not accomplish at its own facility. To achieve this, Carrier arranged with the contractor to perform this service with their specialized equipment, a special skilled machinist and an oven which could maintain a minimum temperature of 350F degrees so the metal would remain pliable.

The former procedure required four (4) man days, viz., two men working sixteen hours, to repair/rebuild the sprockets in question versus the one (1) man day for the contractor to perform this task.

At the time of this incident, the phosphate engineers disassembled and removed the sprocket assembly from the stack reclaimer, and reassembled the sprocket in the reclaimer after the repair/rebuilding work was completed by the contractor.

Obviously, the quality improvement work was done quicker, and has proven to be long lasting as the sprocket assembly has not failed since that time (approximately one and one-half [1&1/2] years ago)."

On July 22, 1992, the Organization responded to Carrier's declination, stating:

"After reading your decline (sic), it appears that there are two methods recognized by the parties to effect the repair of damaged sprockets. In this regard, Carrier has never disputed that we have performed these quality repairs in the past, nor has Carrier demonstrated that the method previously utilized by the employees was inadequate or unacceptable. The reasons presented in the defense of the Carrier's action's are based on the unsupported assumption that the new method employed by Carrier required skills beyond those of its employees, and further, required equipment exceeding those of the facility. These reasons supposedly necessitated the subcontracting of this repair.

**Based on the record, it is apparent Phosphate Engineers performed this type of repair in the past, which secures such repair work in the future under the amended Scope Rule. The new alternate method chosen by the Carrier does not justify the removal of the cited work."**

**Finally, in its Submission to this Board, Carrier asserted that the Board lacks jurisdiction with regard to this claim. According to Carrier, the Organization "wrongfully assumed that since they represent phosphate engineers, such employees' unresolved disputes would be submitted for adjudication to the Third Division of the NRAB." Carrier maintains that a dispute involving non-clerical employees at a phosphate elevator, such as a Phosphate Engineer at the Rockport Phosphate Terminal, is not to be submitted to the Third Division because it does not have jurisdiction over such a dispute.**

**The Board does not express or imply any opinion regarding the merits of this claim, because Carrier's objections to Third Division jurisdiction are well founded. The employees here involved do not belong to any of the specifically enumerated classes or crafts over which the Third Division has been given jurisdiction by the Railway Labor Act. This Division of the Board consistently has strictly construed its statutory grant of jurisdiction. See Third Division Awards 16665 and 16786. By contrast, the statutory grant of jurisdiction to the Fourth Division includes jurisdiction over "disputes involving...all other employees of Carriers over which jurisdiction is not given to the first, second and third divisions."**

**Although the jurisdictional challenge was not raised in handling on the property this is not a fatal oversight. It is axiomatic that jurisdiction of the forum is not waived and can be raised at any time short of a final judgement. See Third Division Awards 8886, 9578 and 10315.**

### **AWARD**

**Claim dismissed.**

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**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 Third Division**

**Dated at Chicago, Illinois, this 13th day of August 1997.**