

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5198

JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER

W. K. EDWARDS, CARRIER MEMBER

JOE R. DUNCAN, ORGANIZATION MEMBER

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

AND

ATLANTA & SAINT ANDREWS BAY RAILWAY CO.

(THE BAY LINE)

AWARD NO. 1

CASE NO. 1

Date of Hearing- September 2, 1993

Date of Award- October 14, 1993

**Statement of Claim**

(1) That the Atlanta & Saint Andrews Bay Railway Company improperly, and unreasonably required all mechanical department employees to be clean shaven effective 12:01 AM, March 10, 1990, bulletin dated March 9, 1990, in violation of the September 1, 1989 Agreement, as amended, but not limited thereto. Thereby, changing a well established and historical condition of employment.

(2) That accordingly, the Atlanta & Saint Andrews Bay Railway Company be ordered to retract the March 9, 1990, bulletin and allow mechanical department employees represented by the IAM&AW to re-grow facial hair that they have historically been allowed to maintain without objection from the Carrier.

**FINDINGS**

Public Law Board No. 5198, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended, and, that the Board has jurisdiction over the dispute(s) herein; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

Carrier is a relatively small railroad, with one customer, a paper mill, generating 70 to 78 percent of its traffic. All Crafts of Carrier's Mechanical Department are represented by the Machinist's Organization. In early 1990, the paper mill, Carrier's largest customer issued

regulations on a Respiratory Protection Policy, which required Carrier employees performing work within the mill to pass a respiratory fit test. The test put in place by the Mill required that all individuals be clean shaven. In response to the Mill's fit test requirement, Carrier issued the following bulletin:

Effective 12:01 AM, March 10, 1993, employees of the Bay Line Railroad will not be permitted on Stone Paper Mill property unless CLEAN SHAVEN. This applies to ALL EMPLOYEES TO INCLUDE OFFICERS. NO EXCEPTIONS. Small neatly trimmed Mustache accepted.

All Mechanical Department Employees must be clean shaven since anyone may have to go into the Mill at any time.

The Organization immediately protested the "clean shaven" requirement on the grounds, inter alia, that Carrier employees have enjoyed the right to wear beards since the first day of operation. This was a long standing practice, a condition of employment which Carrier was not privileged to alter without negotiation and agreement. Carrier responded that it had never relinquished the right to promulgate reasonable and necessary safety rules.

The Organization is simply wrong in harboring the notion that Carrier is not privileged to issue a regulation that all employees that may have to go into its customer's paper mill must be clean shaven. Carrier is not prohibited by any provision of the Agreement from issuing rules and regulations concerning the health and safety of its employees that are not inconsistent with the Agreement. The Organization seems to acknowledge this, as in its submission to this Board it notes that "such regulations must be reasonable." In this case the regulation on facial hair is not only reasonable, it is necessary because of OSHA regulations.

The Organization has also suggested that perhaps not all of Carrier's Mechanical Department employees may be required to work in the Mill, thus the clean shaven requirement is unreasonable when applied to employees assigned at other locations. The facts do not support the Organization on this point. Evidence offered on several employees that it claimed did not perform work at the Mill, but nevertheless were required to be clean shaven to continue working for Carrier, ' has been countered by Carrier evidence that they in fact worked at the Mill subsequent to the time the clean shaven requirement was issued. The Claim of the Organization is without merit. It will be denied.

### AWARD

Claim denied.

John C. Fletcher, Chairman & Neutral Member

R. Duncan, Organization Member

W. K. Edwards, Carrier Member

Signed at Mt. Prospect, IL, this 14th Day of October, 1993