

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Form 1

Award No. 4871
Docket No. 4844
93-4-91-4-22

The Fourth Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Transportation Communications
(International Union

PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former
(Louisville and Nashville Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10593), that:

1. Carrier violated the Agreement on July 20, 1989, when it instructed and/or allowed Mr. Mike Julian of CSX Technologies to perform work that is reserved for Communication Department employes working under our Agreement.
2. Because of this violation, Carrier shall compensate Communication Maintainer F. M. Stewart,, Id. 186679, for four (4) hours at his regular rate of pay."

FINDINGS:

The Fourth 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 employe 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 Claimant in this case was employed as a Communications Maintainer covered by the T & T (Telephone and Telegraph) Rules Agreement. The claim as presented alleges a violation of the Scope Rule as well as Rule 2(d) - Classification and Duties of the same Agreement covering employees in the Communications Department.

The specific fact situation centers around the use of an employee of the CSX Technologies Group to perform the work of replacing a two port fan-out unit with a four port fan-out unit on a data line at Carrier's Osborn Yard, Louisville, Kentucky. Neither party to the dispute gives any indication of the amount of time or the complexity required to perform this work. Rather, the on-property argument centered around the Organization's contention of exclusive right to perform all such work on the basis of the language of the "positions and/or work" Scope Rule and the Carrier's counter contentions that such work was not the exclusive function of either Communications Maintainers or Technology Group employees. Carrier argued that both can and do perform such work throughout Carrier's system.

Before this Board a contention was made by Carrier's representative, for the first time, that this case was defective because of the fact that Communications Department workers on Carrier's property are subject to the jurisdiction of the Second Division of this Board and, therefore, the Fourth Division has no jurisdiction to decide the dispute herein.

The Organization representative countered this contention by pointing to Fourth Division Award 4033 which involved an individual Claimant, a Communications Installer, who handled his own claim against the L & N Railroad for a higher rate of pay alleging that he had been required to fill a Chief Communications Installer position. In that case there was no mentioned challenge to the jurisdiction of the Fourth Division and the Award as rendered contained the statement "This Division of the Adjustment Board has jurisdiction over the dispute involved herein."

The instant challenge to the jurisdiction of this Division to decide this case must be addressed before any possible consideration can be given to the merits of the dispute. The jurisdiction of the respective Divisions of the Board is established by the provisions of the Federal statute which created the Board - the Railway Labor Act, as amended. All Divisions of this Board have, over the years, recognized that a challenge to jurisdiction may be raised at any stage of handling of the dispute. See Second Division Award 11708, and Third Division Award 27575 as examples. The timeliness of this jurisdictional challenge does not render it void. Neither does the statement in Award 4033, quoted supra, standing alone contravene or supersede the explicit provisions of the Railway Labor Act, as amended. The logic expressed in Third Division Award 16665 applies equally to this dispute.

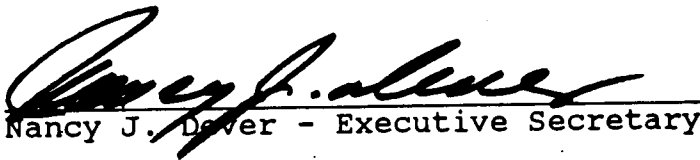
Therefore, no ruling will be made on the merits issues in this claim. Rather, the claim is dismissed without prejudice on the basis that this Division of the Adjustment Board does not have jurisdiction over the class of employees in which Claimant was assigned on the date in question.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1993.