

Award No. 4263

Docket No. 3868

2-B&M-SM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Sheet Metal Workers)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: 1. The Carrier violated the effective Agreement when on or about February 2, 1959, it assigned the work of making new pipe installations in the new air brake room at Billerica Shops to the Sheet Metal Worker Maintenance Crew headquartered at the Power House at Billerica rather than to the East Cambridge B&B Pipefitter Crew.

2. That Sheet Metal Worker H. M. Russell, William Shaw, W. R. Pigeon, and Francis Witts, of the East Cambridge Plumbing Crew, be now allowed an equal amount of time as was consumed by the Billerica Shop Maintenance Crew in the performance of the above referred to work.

STATEMENT OF FACTS: At the time this dispute arose, the carrier employed at the Billerica Shops a maintenance pipefitter crew. The recognized responsibilities for this referred to Billerica Pipefitter Crew is and was that of **maintaining the existing facilities** at that point. The carrier also employed a bridge and building department pipefitter crew located at East Cambridge, Massachusetts. The recognized responsibilities of this bridge and building crew is and was to make all new installations at the Billerica Shops as well as at any other point on their seniority district. Also, this bridge and building East Cambridge crew does maintenance and repair work at all other points. However, many years ago an understanding was reached with this carrier on the separation of the work between the Billerica Shop Maintenance Crew and the bridge and building department crews insofar as Billerica Shops were involved. Under date of March 27, 1944, General Manager F. W. Rourke wrote the carrier's officers, namely:—Mr. Reid, General Superintendent Motive Power; Mr. Sughrue, Chief Engineer; Mr. Ohnesorge, Billerica Shop Superintendent; as follows:

“Boston, Mass., March 27, 1944

“Mr. D. C. Reid
Mr. T. G. Sughrue
Mr. W. H. Ohnesorge

“General Chairman Mosher is complaining about the manner in

"Records will be kept of overtime worked and qualified men called with the purpose in view of distributing the overtime equally."

There is no rule of the applicable agreement spelling out the division of work between the mechanical and engineering departments. This being the case, it is the railroad's responsibility to determine the division of work between departments, not the petitioner's, especially in a claim involving only jurisdiction of work within the same class of employees.

In Third Division Award No. 6953, last paragraph of the Opinion, Referee A. L. Coffee ruled that when work involves employees under the same contract when there is no violation of a rule, there can be no justification for claim. This applies equally here.

Except for that letter, petitioner (having the burden of proof) has produced no agreement or other authority giving claimants priority on the work involved.

II. Assuming without conceding that this letter constitutes an agreement between the parties on the division of work, the Claim still must fail. There may be laid aside at once any question of overtime or of augmented crews. Neither occurred here. The only issue is whether the project was "new work."

This contention must fail because:

1. The air brake room was simply relocated.
2. The former air brake room was abandoned as such.
3. The project was not a new installation. The machines and other equipment were moved to another location.
4. The Billerica Maintenance Crew handled the entire project.
5. The compressed air lines (specific subject of this claim) were only part of the project and to the extent requiring new material were a "replacement in kind" of like lines at the old location.

The claim, in this aspect, then involves no more than a contention that part of a relocation project involving some new materials should have been split off and given to B&B mechanics of the same craft headquartered in another terminal, such B&B mechanics being fully employed during the hours the work was performed.

Carrier respectfully submits, given its most liberal interpretation, such was not the intent of the words "new work."

The claim should be denied.

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 employees 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 were given due notice of hearing thereon.

The Carrier employs a sheet metal workers' maintenance crew at its Billerica (Massachusetts) shop. This crew is under the supervision of the Mechanical Department. The Carrier also employs a sheet metal workers' crew in the Bridge and Building Division of the Engineering Department at East Cambridge, Massachusetts, a distance of about 17 miles from Billerica. Both crews are represented by the Sheet Metal Workers' International Association (AFL-CIO) but there is a separation of seniority rights between them.

In or about 1944, a dispute arose over the division of work between the two crews. A conference was held to resolve the dispute. It was attended by representatives of the Carrier and System Federation No. 18. As a result of the conference, General Manager F. W. Rourke wrote a memorandum, dated March 27, 1944, to the General Superintendent Motive Power, the Chief Engineer, and the Billerica Shop Superintendent which reads, as far as pertinent, as follows:

"General Chairman Mosher is complaining about the manner in which the maintenance crew reporting to Chief Engineer at Billerica Shop is being used in so far as crews from outside points are being used to . . . do the work of the Billerica gang.

"To straighten this matter out, please have it understood and worked to (sic) that the division of work shall be as follows:

"1. **Maintenance**—The Billerica crew is entitled to do all maintenance work in its classification in so far as it is physically able to do so . . .

"**Note:** Maintenance includes replacement of existing facilities with new when replacement is in kind, or does not involve preponderant major changes. (emphasis ours.)

"2. **New Work**—New projects being installed belong to the outside crews. Billerica crew may be used to assist but if being so used they should be given the same opportunity for overtime work as are the outside men . . ." (Carrier's Exhibit "A").

A copy of the above memorandum was sent to B. R. Mosher, General Chairman of the Sheet Metal Workers.

In the beginning of 1959, the Carrier consolidated its freight car shop facilities formerly located at Concord, New Hampshire, with its locomotive shop facilities at Billerica, thereby creating a single and modernized freight car and locomotive repair shop for its system. The Billerica crew was assigned to perform the necessary changes. The four Claimants, sheet metal workers W. R. Pigeon, H. M. Russell, W. Shaw, and F. Witts, who are members of the East Cambridge crew filed the instant grievance in which they contend that they should have been assigned to perform said work in accordance with the above memorandum. They requested compensation equal to that paid by the Carrier to the Billerica crew for the performance of the work in question. The Carrier denied the grievance.

1. In defense of its position, the Carrier argues that the memorandum

of its General Manager merely was an internal letter of instructions to its supervisors dealing with the settlement of the then existing squabble as to the distribution of overtime and thus created no contractual rights of the claimants. We disagree. A careful reading of the memorandum has convinced us that it primarily records an agreement regarding the division of work between the Billerica and outside crews which was reached by the Carrier and System Federation No. 18 in a preceding conference. It is true that the distribution of overtime is referred to in the second sentence of No. 2 of the memorandum. But this reference is only incidental to the obvious primary intent of the parties; to establish a demarcation line regarding the division of work between the crews involved. This conclusion is corroborated by an affidavit of F. L. Davis, former General Chairman of the Machinists, (Organization's Exhibit "B").

Accordingly, we hold that the memorandum demonstrates a binding agreement by the parties to the labor agreement as to the division of work between the Billerica and outside crews.

2. The next question posed by this case is whether the work in dispute merely involved some relocation of work areas, as asserted by the Carrier, or whether it involved a new project or preponderant major changes, as contended by the Claimants. The evidence on the record considered as a whole convincingly proves that either new installations within the contemplation of No. 2 of the memorandum or preponderant major changes within the purview of No. 1, Note, thereof were made by the Billerica crew. This finding is amply supported by an article entitled "Modernized Air Brake Shop" which appeared in the Carrier's Magazine (Organization's Exhibit "A"). The article contains a detailed description of the work performed at the Billerica shop which leaves no doubt that either new installations or preponderant major changes were involved in the course of the consolidation and modernization program. The Carrier has objected to the introduction of a thermofax copy of said article on the ground that it was not presented during the handling of the instant grievance on the property. In our opinion, the Carrier's procedural objection is unjustified because the thermofax copy only contains facts which were published by the Carrier and had become public knowledge.

In summary, we hold that the work here in dispute belonged to the East Cambridge and not to the Billerica crew in accordance with the clear and unambiguous wording of No. 1, Note or No. 2 of the memorandum.

3. The Claimants are entitled to compensation at the pro rata rate equal to that received by the Billerica crew for the work under consideration. The record does not disclose the exact amount of such compensation. We are confident that the Carrier's records will reveal it. However, if the parties cannot reach an understanding, each party shall be entitled to resubmit the instant grievance to us solely for a final determination of the amount due to the Claimants.

AWARD

Claim sustained in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July, 1963.

DISSENT OF CARRIER MEMBERS TO AWARD 4263

The majority are in grave error in accepting an internal letter of instructions as a bona fide agreement between the parties. On the same date this award was made, the majority in Award 4265 refused to consider as a part of the agreement a bulletin appended to the printed agreement and which is referred to on the preceding page of that agreement as follows:

“Attached are samples of notices which are to be posted in accordance with Paragraph 2 above.”

On the one hand, the majority refuses to accept a page of the agreement which has never been questioned since the effective date of the agreement, i.e., October 1, 1952, and in the instant dispute takes an internal letter and considers it as a binding agreement.

Assuming, but not admitting, that the letter of instructions quoted in the Opinion is an enforceable agreement between the parties, a cursory examination of the opening paragraph, which reads in full as follows:

“General Chairman Mosher in complaining about the manner in which the maintenance crew reporting to Chief Engineer at Billerica Shop is being used in so far as crews from outside points are being used to supplement, or do the work of the Billerica gang.”

shows the problem confronting the parties in 1944 was the matter of crews from outside points being used to supplement or do the work of the Billerica gang. Obviously the Billerica crew was losing overtime pay because outside crews were brought in and complaint was made to the carrier's officials. The resultant memorandum therefore could apply only to the matter of overtime, and the majority in taking cognizance of the internal memorandum of instructions should have given weight to the reason it was written.

There is no agreement rule to cover the assignment of this work to the East Cambridge crew who were fully employed during the time the Billerica crew performed the work, and there is no basis for sustaining the claim of the East Cambridge crew.

We dissent.

H. K. Hagerman

Francis P. Butler

P. R. Humphrey

W. B. Jones

C. H. Manoogian