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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6440
Docket No. 6256
2-MP-SM-'73

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employes' Department, A. F. of L. - C. I. O. (Sheet Metal Workers)
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Carrier violated the current agreement, particularly Rule 97 at St. Louis, Missouri when they improperly assigned two Machinist the duty of removing all piping to water cooled air compressor and the removing of hand rails from Engine 1119 on July 16, 1970.

2. That accordingly the Carrier be ordered to additionally compensate Sheet Metal Workers F. Keller and C. Dane in the amount of eight (8) hours each at the pro rata rate of pay.

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 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 were given due notice of hearing thereon.

On July 16, 1970, on the third shift at Carrier's diesel shop at Ewing Ave., St. Louis, Missouri, a running repair facility, Carrier assigned two machinists the work of removing a water-cooled air compressor from locomotive 1119. Before the compressor could be removed, the piping leading to and from the compressor had to be disconnected and a section of the engine hand rail had to be removed so that the compressor could be lifted free of the engine. The Organization claims that the work of disconnecting all water, oil and air pipes from the air compressor and the hand rails from the engine should have been performed by Sheet Metal Workers and hence Claimants were damaged.

The Organization relies primarily on Rule 97 of the current agreement, which reads in pertinent part:

"Connecting and disconnecting of air, water, gas, oil and steam pipes, and hand rails; and all other work generally recognized as Sheet Metal Workers' work."

The Organization also cites in support of its position a jurisdictional settlement, Award 658, dated July 19, 1954, accepted by the Carrier which gave the handrail work to the Sheet Metal Workers craftsmen. Finally, the Organization claims that the Incidental Work Rule is not applicable since the Carrier refused a time check of the work and further that rule was abrogated as of May 12, 1972 and is no longer effective. With reference to the time check matter the record contains only the following letter relating to the request:

"On July 16, 1970, third shift, two machinists were assigned to remove the air compressor from Engine 1119. Sheet Metal Worker J. Brimm was removing his piping, when the supervisor assigned him other duties. He was told that the machinists would perform all the work on this job.

Again, the amount of piping on this water cool air compressor, is in excess to that of the machinist and their work. Also the handrail has to be removed on this job.

This constitutes a violation of the Controlling Agreement.

Claiming eight hours penalty compensation each, at the pro rata rate, in favor of Sheet Metal Workers F. Keller and C. Dane.

As requested after the first violation on this shift, no time check was made, 7-8-70."

The Carrier bases its assignment of the work in question to the machinists on its interpretation of the Incidental Work Rule (Public Law 91-226 effective April 9, 1970) which stated:

"At running repair work locations which are not designated as outlying points where a mechanic or mechanics of a craft or crafts are performing a work assignment, the completion of which calls for the performance of "incidental work" (as hereinafter defined) covered by the classification of work rules of another craft or crafts, such mechanic or mechanics may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as "incidental" when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment. Incidental work shall be considered to comprise a

preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment. In no instance will the work of overhauling, repairing, modifying or otherwise improving equipment be regarded as incidental.

If there is a dispute as to whether or not work comprises a "preponderant part" of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work assignment in question; however, the shop committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work."

We find that the Incidental Work Rule did modify the implementation of Rule 97 as well as other jurisdictional agreements and that it was controlling as of July 16, 1970, regardless of later modification. The question then remains as to whether the Carrier correctly applied that rule. First as to the time study, we do not agree that the letter quoted above, dated September 4, 1970, constitutes evidence that the shop committee had requested that the work in question on July 16, 1970 be timed. There is no dispute that the removing of the air compressor from the locomotive was machinists work. The record reveals little substansive evidence but much rhetoric concerning the relative work involved in the various tasks. We are not disposed therefore,to disturb the supervisory decision that the main task was that of the machinists and the claimed work was incidental to that task.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January, 1973.

LABOR MEMBERS' DISSENT TO AWARD NO. 6440
DOCKET NO. 6256

The findings in Award No. 6440 read in part:

> "...With reference to the time check matter the record contains only the following letter relating to the request:
>
> > 'On July 16, 1970, third shift, two machinists were assigned to remove the air compressor from Engine 1119. Sheet Metal Worker J. Brimm was removing his piping, when the supervisor assigned him other duties. He was told that the machinists would perform all the work on this job.
> >
> > Again, the amount of piping on this water cool air compressor, is in excess of that of the machinist and their work. Also the handrail has to be removed on this job.
> >
> > This constitutes a violation of the Controlling Agreement.
> >
> > Claiming eight hours penalty compensation each, at the pro rata rate, in favor of Sheet Metal Workers F. Keller and C. Dane.
> >
> > As requested after the first violation on this shift, no time check was made, 7-8-70.'"

This is not a fact, as the record shows that the first dispute over the work involved in this dispute occurred on July 8, 1970 and that the Employes made a request that a time check be made on the work involved. The employes did file a claim on that violation and progressed the dispute to this Division. We issued it Docket No. 6257.

The Carrier failed to grant the request and again made the same type of assignment on July 16, 1970 which resulted in this dispute being progressed to this Division. We issued it Docket No. 6256. The record in both of these disputes show that the request for a time study was made and pursued in each step of the handling on the property and as to date the request has not been granted.

The Local Chairman in his first written claim to the Carrier on the violation of July 8, 1970, which is shown as Employes' Exhibit 1 in Docket 6257 states the following:

"A request was made to the Master Mechanic and General Foreman for a time check to be made on the next doubtful situation but no answer was forthcoming."

This statement was explained to the Division by General Chairman Moorhead at the hearing before the Division, when he said that after the violation that occurred on July 8, 1970, the Local Committee made a verbal protest to Master Mechanic Larkan about the violation and requested that a time check be made the next time such assignment was made. The next time it occurred was on July 16, 1970, eight days after the first dispute occurred which was after the Committee requested that the time study be made.

The Carrier failed to grant the request resulting in the filing of both the claims. The record in the dispute shows that the issue of a request for a time study was made prior to the violation of July 16, 1970 and was made part of the dispute up to and including the top Carrier official. As the Employes,in their Exhibit 1, which is the initial claim to Master Mechanic Larkan, state the following in part:

"As requested after the first violation on this shift, no time check was made 7-8-70."

Master Mechanic Larkan's reply, which is shown as Employes' Exhibit 2, reads in part:

"As for your request for a time study, we will be happy to work with you on this matter within the framework of the new agreement."

The time study request was again referred to in Exhibit 2 A which reads in part:

"We cannot agree that the Machinists had the preponderance of the work, because there was no time checks."

This was also mentioned in the next appeal as Employes Exhibit 4 A reads in part:

"...also there was never a time check made..."

The top Carrier officer, Mr. O. D. Sayers, Director of Labor Relations, in his letter dated September 24, 1971, shown as Exmployes' Exhibit 10, states the following:

"Although you stated that a general request had been

> "made for a time study...prior to the date of claim, the fact remains that there was no request for a time study in connection with the removal of the air compressor in question."

So when the referee, in his findings, states that:

> "With reference to the time check matter the record contains only the following letter relating to the request..."

he ignored the record before him as shown above. The Labor Members in discussing these two disputes before the referees pointed out that the Carrier's Chief negotiator, Mr. J. P. Hiltz, Jr., in his statement before the Committee, supports the Employes' position in these disputes by stating that when a Carrier fails to grant a request that a time study be made, as was done in these cases, the claim should be paid. The following appears in the printed record of the hearing before the Committee on Interstate and Foreign Commerce House of Representatives, Ninety-First Congress Second Session H. J. Res. 1112 and H.J. Res.1124, Joint Resolutions to Provide for the Settlement of the Labor Dispute Between Certain Carriers by Railroad and Certain of their Employes.

Page 234, Mr. Hiltz:

> "If there is a dispute as to whether or not the incidental work rule comprises a preponderant part of a work assignment, the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue the work or assignment in question. <u>However a joint time check will be granted at the request of the shop committee to determine whether or not the time required to perform the incidental work exceeded the the time required</u> to perform the main assignment. If the joint check discloses that the time required to perform the incidental work exceeded the time required to perform the main assignment, a claim will be honored by the carrier to the first man out on the overtime board of the craft under whose classification of work rules the incidental work falls or the actual time to pro rata rates required to perform such incidental work with a minimum of two hours. <u>If the representative of of the carrier declines to make a joint check, such first man out shall be paid a call of four hours at the</u> pro rata rate."

The findings and the Award are clearly erroneous and contrary to the Agreement and other evidence of record. For these reasons we dissent.

Therefore Award No. 6440 is palpably erroneous.

E. J. HAESAERT

D. S. ANDERSON

W.O. HEARN

E. J. MC DERMOTT

R. E. STENZINGER