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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6544
Docket No. 6409
2-BN-SM-'73

The Second Division consisted of the regular members and in addition Referee Edmund W. Schedler, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Sheet Metal Workers)
 { Burlington Northern Inc.

Dispute: Claim of Employees:

1. The carrier violated the provisions of the current agreement when they improperly assigned other than sheet metal workers to assemble 18 gauge sheet metal material racks in the store department at Livingston, Montana. These racks were bolted together by the use of tools.
2. Accordingly, the carrier be ordered to compensate sheet metal worker J. D. O'Neill in the amount of 16 hours 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 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 waived right of appearance at hearing thereon.

The facts upon which this claim is based is that on March 10 and 11 of 1971 a Bridge and Building employee assembled some sheet metal shelves in the Stores Department at Livingston, Montana. The shelves were prefabricated of 18 gauge metal. Sheet Metal Workers and other crafts are employed at Livingston.

On April 9, 1971 a time claim for 16 hours was filed with the carrier in the behalf of J. D. O'Neill by Sheet Metal Local Chairman R. D. Ward. The Organization contended the carrier violated Rule 71, the wit:

Rule 71. CLASSIFICATION OF WORK

"Sheet metal workers' work shall consist of tinning, copper smithing and pipefitting in shops, yards, buildings and on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling and maintaining

parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter, including brazing, soldering, tinning, leading, and babbitting, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil, sand and steam pipes; the operation of babbit fires; oxyacetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work."

The Carrier contended the dispute submitted to the Board was not the same as the dispute handled on the property because the Organization did not give the specific date of the alleged violation. The Carrier pointed out that by not giving a specific date, the Organization was attempting an all encompassing thrust to claim every occurrence in the erection of prefabricated shelves as being within the province of Rule 71. We do not agree. At the top of page 2 of the Organization's statement to the National Railroad Adjustment Board the dates of March 10th and 11th 1971 are clearly written and a careful reading of this document discloses the occurrence was on these two dates. The Board notes that these same two dates were used in the narrative discussion in Local Chairman Ward's letter to Shop Superintendent Jacobson dated April 9, 1971.

The Carrier also contended the B&B employees had done the work in dispute on 47 different working days between 1964 and 1968 and that Rule 98(c) clearly provided that there were exceptions to the Scope of the Agreement. The relevant provisions are:

Scope

"It is understood that this Agreement shall apply to those who performed the work specified herein in the Maintenance of Equipment Department and all other Departments of this Company wherein work covered by this Agreement is performed, except where covered by other Agreements on the effective date hereof." (underlining for emphasis)

and Rule 98 (c) in pertinent part reads:

"(c) It is the intent of this Agreement to preserve preexisting rights accruing to employees covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S Railroads prior to the date of merger; and shall not operate to extend jurisdiction of Scope Rule coverage to agreements between another organization and one or more of the merging Carriers which were in effect prior to the date of merger."

The Organization countered this defense by pointing out that Chicago, Burlington and Quincy was merged into the present Carrier and Rule 62 of the CB&Q Shop Craft Agreement contained the identical language as Rule 71 of present Agreement with the exception that the CB&Q Agreement did not have the word "sand."

In addition the Organization pointed out that General Chairman of the Sheet Metal Workers had filed a similar grievance against the CB&Q and in his submission he contended the CB&Q violated Rule 62.

It is the opinion of the Board that Rule 71 does apply. For the instant dispute there is no material difference between Rule 71 and the CB&Q Rule 62.

Examination of Rule 71 discloses that the Carrier has agreed that the Sheet Metal Workers will perform certain work. There are no tools described in this rule and careful reading of the rule discloses that words such as erecting, assembling, and installing are used. Certainly these are general terms relating to working with sheet metal. The fact that no tools or a full complement of tools is necessary for a particular job does not, in the opinion of this Board, alter the meaning of Rule 71. The materials used in the instant dispute were 16 gauge, 13 gauge, and 18 gauge materials. These are materials within the limits of Rule 71.

Regardless of the previous practice the language of Rule 71 is clear and unequivocal. The Grievant was denied an opportunity to perform work that he was contractually entitled and he will be compensated at his regular straight time rate for 16 hours of work.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Kallen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1973.