

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10925
SECOND DIVISION Docket No. 10608-T
2-SP-SMW-'86

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

(Sheet Metal Workers International Association
Parties to Dispute: (
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. That the Carrier violated Sheet Metal Workers Classification of Work Rule 77 of the current Motive Power and Car Department Agreement on March 2, 1983.

2. That the Carrier compensate claimant W. Snider for two (2) hours pay at straight time rate plus interest at the rate of 10% per annum.

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 employes 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.

This Claim involves the ever present issue of an alleged breach of the classification of Work Rules. It is undisputed that on March 2, 1983, a Machinist, utilizing an oxy-acetylene cutting torch, was assigned by Carrier the job of cutting an 8 inch diameter seamless pipe, 10 feet long, into pieces 12 inches in length. The cut pipe was then placed in a lathe to mill, and ultimately the pipe was welded into a fuel filter housing as part of repairs on a diesel locomotive. The entire time involved in cutting the seamless pipe was approximately two hours. The Machinists Organization declined to file a Submission, but expressly declined to disclaim the right to the work in dispute.

As a preliminary matter, the Carrier has timely raised a jurisdictional issue which we must address prior to resolution of the instant dispute. The Carrier posits that the Claim involved a third party who has an interest in the disputed work, and, therefore, the issue herein presented involves a jurisdictional work dispute, the resolution of which the parties have agreed to submit to conference and negotiation procedures on the property.

The Memorandum, commonly referred to as Memorandum "A," was executed April 17, 1942, and incorporated into the current Agreement. The Memorandum states in pertinent part:

"In connection with and supplementary to the Motive Power and Car Departments Agreement which became effective April 16, 1942, it is recognized by the employes represented by System Federation No. 114, through their several General Chairmen and the Southern Pacific Company (Pacific Lines), that in and by said agreement, numerous changes have been made in the 'Classification of Work' and other Rules under which men have heretofore been working, and a great deal of detail and description of the work has been eliminated, which may result in one craft or class requesting or contending for work that is being performed by another craft or class.

In recognition of the facts above recited, and in order to avoid confusion at the local points and provide an orderly determination of the items of work not specifically stated in the 'Classification of Work' and other Rules of the several crafts, it is agreed that existing practices will be continued, unless and until otherwise decided by conference and negotiation between the General Chairmen involved, and the General Superintendent of Motive Power, for purpose of uniformly applying such decision wherever necessary on the railroad."
(Emphasis supplied).

The Board does not concur with Carrier's conclusion that this dispute involved an inter-craft dispute requiring on the property negotiation. In Second Division Award No. 8283 cited by Carrier, the work at issue was held to be new or experimental work which had never previously been performed, and each craft claimed the exclusive right to perform the disputed work under its respective Work Classification Rules. Further, each craft filed Submissions in connection with the Claim highlighting even more intensely the jurisdictional dispute between the crafts over the work in question. Similarly, in Second Division Award No. 7218, the Machinist's craft filed a Submission in response to the Carmen's Claim of the right to operate a new piece of equipment used in the repair and maintenance of freight cars. The Machinists claimed the exclusive right to operate the "precision" equipment and, therefore, the right to perform the work. The Carmen asserted their right to operate the machine based upon past practice on the property involving such work. Second Division Award No. 7481 merely referenced Award No. 7218 in dismissing the Claim on jurisdictional grounds, and in Award No. 7491, both

Organizations involved provided Ex Parte Submissions. The Board finds the letter in this dispute from the Machinists Craft to the Executive Secretary declining to respond, while not a disclaimer of the work in dispute, to be insufficient in our opinion to create an inter-craft dispute, subject to the conference and negotiation requirements of Memorandum "A".

Turning to the merits of the Claim, the Organization cites the classification of Work Rule 77, which provides in pertinent part:

"Sheet metal workers' work shall consist of tin-
ning, coppersmithing and pipefitting in shops,
yards and buildings (except work performed by
Maintenance of Way Department employes) and on
passenger train cars and engines of all kinds; ***
the bending, fitting, cutting, threading, brazing,
connecting and disconnecting of air, water, gas,
oil and steam pipers; *** oxy-acetylene, thermit
and electric welding on work generally recognized
as sheet metal workers' work, and all other work
generally recognized as sheet metal workers' work."
(Emphasis supplied)

The Board finds that the language of Rule 77 is, with respect to the act of cutting pipe, plain and unambiguous. Carrier's contention that it was past practice for this work to be performed by the Machinists craft was unsubstantiated by evidence capable of refuting the clear and unambiguous language of the Rule. Inasmuch as this dispute involves the Machinists, and not Maintenance of Way Employees who fall within the Rule 77's express exception to its coverage, the Board's decision in Second Division Award No. 5947 is easily distinguishable.

The cases cited by Carrier for the proposition that a demonstration of an exclusive, system-wide past practice must be made by the craft claiming the work, do not contain the detailed Work Rule language comparable to that at issue in this case. See Second Division Awards No. 10091, 10076, 7020. The concept of system-wide exclusivity simply has no application to the particulars of this case where the Rule's language as applied to these facts is clear and unambiguous. Moreover, no contention has been made that the work performed by the Machinist was merely incidental in nature.

That Mechanics of both crafts use oxy-acetylene torches in accordance with their respective classification of Work Rules does not cause, ipso facto, the boundaries of the two crafts to merge. This is particularly so where the only evidence suggests that the work in question has long been assigned to the craft challenging the assignment. In this case the evidence consists of the unrefuted statements of three Sheet Metal Workers, combined with the plain and unambiguous wording of the Rule itself as applied to the disputed work. There being no support, contractual or otherwise, which entitles the Organization to an award of interest, that portion of the Claim is hereby denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1986.