Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11897
Docket No. 11705-T
90-2-88-2-199

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. The Carrier violated the provisions of the current controlling agreement, Rule 71 in particular, when they improperly assigned other than Sheet Metal Workers to install light gauge sheet metal directive signs in the West Burlington Diesel Repair Facility on September 16, 17, 20, 21 and 24, 1987.

2. That accordingly, the Carrier be required to compensate Sheet Metal Workers D. Osborne and R. Hunt, in the amount of sixty-eight (68) hours at the prevailing overtime rate, to be divided equally between the Claimants.

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.

The pivotal question in this dispute is whether Carrier violated the Controlling Agreement, particularly Rule 71 when forces other than Sheet Metal Workers installed light gauge sheet metal directive signs in the West Burlington, Iowa Diesel facility on September 16, 17, 20, 21 and 24, 1987. It was the Organization's position that Rule 71 (Classification of Work) clearly reserved this work to the Sheet-Metal Workers employed at this facility and moreover, prior to this instance, said type of work was performed by Sheet Metal Workers at West Burlington. Letters were submitted by Sheet Metal Workers attesting to such assignments.

As a party in interest, the Brotherhood of Maintenance of Way Employes filed a submission asserting that said work was customarily assigned to Maintenance of Way forces. It maintained that Rules 1, 55 and the Note to Rule 55 of the BMWE Agreement established that the work was encompassed within the Scope of the BMWE Agreement.

Carrier contended that the plain meaning of the language of Rule 71 certainly does not support the conclusion that the hanging of signs accrues exclusively to Sheet Metal Workers. It argued that Rule 71 must be construed within the context of the skills, training and experience which the negotiating parties contemplated were required of the affected journeymen. Specifically, it maintained that hanging signs was work requiring no skill or training to perform and thus said work could not reasonably belong to any one craft. Further, it observed that contrary to the Organization's contention that Sheet Metal Workers routinely performed this work in and around the West Burlington Diesel facility, the statements of several Shop Superintendents show that the hanging and mounting of such signs was never performed by any one craft.

In reviewing this case, we concur with Carrier's position. Firstly, the language of Rule 71 does not explicitly reserve the disputed work to the Sheet Metal Workers Craft. The signs were cut out of metal by Sheet Metal Workers, but were painted by members of the Carmen's Craft and hung in place by members of the Brotherhood of Maintenance of Way Craft, though some Sheet Metal Workers participated in the latter work. More important, however, we have no precedent adjudicated cases dealing with identical work claims. To be sure, Second Division Award 6544 is persuasive and thoughtful, but it is a distinguishable dispute. More painstaking interpretative analysis is needed where language clarity is lacking. Secondly, the Organization has not demonstrated that hanging up such signs was exclusively performed by Sheet Metal Workers on a system wide basis. There are indications that members of the craft performed this work at the West Burlington facility, but there are also persuasive indications that other crafts performed this identical work.

Accordingly, in the absence of clear unambiguous rule language, on point precedent cases and/or demonstration of system wide past practice, the Board has no basis for sustaining the Organization's Claim. There is not enough evidence in the record to support the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of July 1990.

LABOR MEMBERS' DISSENT
TO
AWARD 11897, DOCKET 11705-T

The findings of the majority of the Board in this dispute are most grievously in error. The findings have not only rejected the accepted past practice on the property but in addition have totally ignored and forever damaged the intent and appreciation of the literal contractual language contained in the Organization's Classification of Work Rule.

The dispute involved the erecting of light gauge sheet metal signs in the Maintenance of Equipment Department by other than those employees represented by the Sheet Metal Workers' International Association.

As set forth in the Organization's presentation, the work had been previously performed by Sheet Metal Workers at the West Burlington Facility. This was supported by signed, sworn and notarized statements of fact provided by the employees who had, prior to the rise of the violation, performed the work.

The literal language of the Sheet Metal Workers' Classification of Work Rule states that the Organization's employees will perform the work of

> . . . building, erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin, zinc, light metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter . . . (Emphasis added)

As set forth in the Award rendered in this dispute, the majority agrees that the signs were properly fabricated by Sheet

Metal Workers, however, the majority has attempted to remove the exclusive right of the employees here involved of the erecting of light gauge sheet metal parts. This erroneous position stands alone in the face of past division history and interpretations regarding literal contractual language.

The majority's opinion regarding the applicability of Second Division Award 6544 and the lack of adjudicated precedent cases is additionally without merit. Award 6544 clearly dealt with light gauge sheet metal parts as those parts are defined in the Sheet Metal Workers' Classification of Work Rule. In the instant dispute, the sheet metal parts additionally required the use of tools to complete the here involved assignment. This fact does not differentiate from Award 6544 but serves to bolster the Organization's position in the claim.

The majority's refusal to accept the facts set forth by the Organization regarding prior practice at the Facility and the exclusive contractual language contained in the agreement provisions renders this Award erroneous and accordingly, does not set precedent. We most vigorously dissent to Award 11897 and the findings contained therein.

Billy J. Croft
Labor Member

Mark Fehlhaber
Labor Member

Ronald E. Kowalski
Labor Member

Don Hamilton
Labor Member

R. L. Johnson
Labor Member

Labor Member