

Award No. 2625

Docket No. 2392

2-AT&SF-SM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY SYSTEM**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Employees of the Sheet Metal Workers' Craft were improperly assigned to erect and assemble a prefabricated metal building, made of ten (10) gauge and lighter metal at Albuquerque, New Mexico.

2. That accordingly the Carrier be ordered to:

a. Cease and desist from using other than employees of the Sheet Metal Workers' Craft to perform this work.

b. Additionally compensate Mr. Wm. M. Sanders, Sheet Metal Worker at the applicable straight time hourly rate of pay in the amount of eight (8) hours for each day that the Carrier used other than Employees of the Sheet Metal Workers' Craft.

EMPLOYEES' STATEMENT OF FACTS:

On or about October 13, 1955, the carrier assigned Maintenance of Way Employees to assemble and erect a sheet metal prefabricated building, sixty (60) feet long and twenty (20) feet wide made of ten (10) gauge and lighter metal on the carrier's property at Albuquerque, New Mexico.

The building was erected to provide lunch room, locker and toilet facilities for switchmen at Albuquerque. The carrier employs a force of sheet metal worker mechanics and helpers at Albuquerque for the purpose of performing work coming under the provisions of Rule 83 of the current agreement in the operating department. The toilet facilities installed in this building were

The carrier asserts it has been the practice to use its bridge and building department employees, represented by the Brotherhood of Maintenance of Way Employees, to erect or assemble prefabricated metal buildings, except when such work was contracted to outside parties. As evidence of this fact, the carrier submits statement showing prefabricated metal buildings erected on its Western Lines Grand Division by its bridge and building department employees represented by the Brotherhood of Maintenance of Way Employees, as well as such buildings erected under contract with outside parties, during the period January 1, 1945 to August 1956. No question was ever raised by the complainant sheet metal workers' organization respecting the use of bridge and building department employees or contractors' forces to perform such work until the instant dispute arose. It becomes crystal clear, therefore, that the sheet metal workers' organization is now asking this Board to give to employees it represents work which does not come within the scope of the shop crafts' agreement and which has heretofore been performed by employees represented by the Brotherhood of Maintenance of Way Employees and contracted to outside parties.

The National Railroad Adjustment Board has consistently held that it is not within its jurisdiction to either make, amend, or nullify, agreements duly executed by a carrier and its employees. Some of the awards declaring the attitude of the Board in this respect are as follows:

Second Division Award 1122:

"... This Board cannot make or amend a rule. It is bound by the agreement which the parties have made."

Second Division Award 1164:

"... The argument which they have made before this Division is a very persuasive one for a change in the rule. But we cannot change rules. Our jurisdiction is only to interpret them."

Second Division Award 1386:

"The Division concludes that such agreements control the claims made herein and require a denial thereof. To hold otherwise would require the Division to revise the old or make a new agreement which it has no right or authority to do."

Carrier submits that the employees' claim is not supported by any rule in the controlling shop crafts' agreement nor by past practice. It is obvious they are attempting to obtain through this Board a change in a negotiated rule and understanding which, of course, your Board has no authority to do.

Carrier respectfully requests that the claim 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.

The parties to said dispute were given due notice of hearing thereon.

Assignment complained of: Maintenance of Way employes assembled and erected sheet metal prefabricated building 60' x 20' on Carrier's property in Albuquerque, New Mexico. Only toilet facilities in said building were installed by Sheet Metal Workers. Claimant: Wm. W. Sanders, Sheet Metal Workers. Use of building: To provide lunch room, locker and toilet facilities for Switchmen at Albuquerque.

Alleged rule violations: (1) Rule 83, reading:

"Sheet Metal Workers' work shall consist of tinning, coppersmithing, and pipefitting in shops, yards, buildings, and on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling for repairs and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter . . ."

(2) Violative of Rule 82 defining what is a sheet metal worker.

(3) The assignment of Maintenance of Way employes to perform work in question is not authorized in the current agreement between the parties.

Question: Whether the instant work falls within the scope of the agreement between the Carrier and the Sheet Metal Workers?

Our answer is no, except for the installation of toilet facilities and that work was performed by the complaining craft, hence the claim asserted is without merit.

We have several times expressed agreement with the basic argument advanced by the Carrier that the preamble of the Agreement must be considered in conjunction with all rules incorporated therein. See Awards Nos. 1501, 2198 and 2617, and Awards cited therein. Here such preamble reads:

"The Agreement shall apply to employes of those Carriers who perform work outlined herein in the Maintenance of Equipment Department, Communications Department, Newton Rail Mill and Water Service Department under jurisdiction of the Operating Department."

The only work involved in the construction in question which fell within the stated scope of the Agreement therefore were the toilet facilities and that installation was given to the Sheet Metal Workers. All other work done in the Operating Department fell outside of the scope of the Agreement upon which the complaint is based.

Fabrication in the shop was not involved in this dispute as it was in dispute subject of Award 2316. In Award 2372, cited by the Organization, similar departmental restrictions upon the scope of the Agreement were either not present, or if so, were not raised and considered in the findings. Similarly, in Awards 2359, 2357, 2135, 1995, 1963, 1530, 1269, 1120, 1104 and 894, cited by the Organization. The three remaining cited awards are distinguishable upon the following grounds: Sustaining Award 1359 did not involve departmental scope restrictions in respect to Sheet Metal Workers, hence we correctly rule that it fell within the unrestricted jurisdiction of that craft. In Award 1516, work of dipping car material in paint and varnish vats in the Car Department by shop laborers was determined improper. There, however, the work was done under the supervision of the Car Department

and this was one of the two departments expressly named as being within the jurisdiction of Painters under the Agreement. Finally, departmental restrictions were not involved in cited Award 1799 but on the contrary the preamble there involved expressly provided that the Agreement applied to the performance of work specified therein "in all departments of the Pullman Company in the United States and Canada."

We thus find no conflict in the Awards rendered by this Division in regard to the basic question involved.

AWARD

Claim and request denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1957.