

Award No. 3413

Docket No. 3226

2-IC-SMW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Sheet Metal Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That, contrary to the provisions of Classification of Work Rule No. 108 of the controlling agreement, the Illinois Central Railroad Management assigned other than Sheet Metal Workers the work of dismantling all pipe from the Heat Exchangers, Steam Traps, Water Pumps, and other Equipment on the Boiler, No. 790, at the Markham Car Yard Power Plant, Chicago, Illinois.

2. That the Carrier be ordered to discontinue this practice.

3. That the Carrier be order to compensate Sheet Metal Worker Gerald A. Corwin, eight (8) hours' pay at the time and one-half rate of pay for June 26, 1957.

EMPLOYEES' STATEMENT OF FACTS: The Illinois Central Railroad Co., hereinafter referred to as the carrier, maintains at Chicago, Ill., Maintenance of Equipment repair shops known as Markham Locomotive Shops and Markham Car Yard. Markham Car Yard is located approximately one and six tenths miles from the Markham Locomotive Roundhouse. See Exhibit A submitted herewith which is a sketch showing the location of the shops.

The carrier maintains at its Markham Car Yard Shops a power plant and other mechanical equipment, which prior to June 26, 1957 was maintained and serviced by Maintenance of Equipment Department' employes holding seniority in the Markham Locomotive Shops. See Exhibits B, B-1, C and C-1 submitted herewith.

When the repair work to be done fell within the Sheet Metal Workers' Classification of Work Rule, sheet metal workers holding seniority in the Markham Locomotive Shops were assigned to perform the necessary sheet metal workers' work in the Markham Car Yard. (See Exhibits C and C-1 submitted herewith.)

on the same basis as Lafayette admittedly a main terminal, with respect to starting time. The same rule, however, after the specific enumeration, speaks of 'other' outlying points, and hence does not necessarily exclude South Hammond from the outlying points. The fact remains, moreover, that mechanics other than electrical workers have performed the electrical work required at South Hammond since 1932, and no claim was initiated in this connection until June 1942. This circumstance is amply persuasive that the parties regarded South Hammond as an outlying point; and the conclusion is justified that the conduct of the parties reflected adequately the mutual agreement required by the rule."

Award 1684: "It is urged that it is the practice of the carrier to send Pullman electricians to Lincoln to do repair work on Pullman equipment. Many instances are cited where this has been done. The carrier admits that Pullman electricians are often sent to Lincoln to perform complicated work but that such work is not done exclusively by Pullman electricians from Omaha. Carrier contends that it determines the advisability of having the work done by Pullman electricians and oftentimes has it done by railroad electricians at Lincoln. The record does not establish a practice of using Pullman electricians exclusively at Lincoln.

"We conclude, therefore, that the work at Lincoln is not reserved exclusively to Pullman electricians under the terms of the Pullman electricians' agreement. Nor does the record establish a practice of having such work performed exclusively by Pullman electricians assigned at Omaha. The claim is not therefore supported by the record."

The rules in the above cases provided for work at **outlying points to be mutually agreed upon** and the question was raised what constitutes a mutually agreed upon outlying point. In both cases, the Board decided that the point in question was within the meaning of the rule and that the claimants, therefore, had no contractual rights to the work involved. In the instant case before the Board, the rule involved (Rule 33 as amended by Article 7 of the August 21, 1954 Agreement) simply provides for work at **points where there is not sufficient work to justify employing a mechanic of each craft**. Markham Car Department is such a point within the meaning of the rule, and this claim should likewise fall. To hold otherwise would have the effect of striking Rule 33 from the agreement, and this Board has consistently held that this would be beyond its authority.

The carrier requests that the claim be denied as it is entirely without basis.

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 were given due notice of hearing thereon.

In the area near Chicago commonly known as Markham Yards, carrier maintains car repair facilities and a locomotive roundhouse about one and one-half miles apart. Sheet Metal Workers are regularly employed at the locomotive department but none are employed at the car department.

The proximity of these facilities, the fact that on some occasions carrier has sent locomotive department sheet metal workers to do repair work at the car department, and the absence of a provision in seniority Rule 32 which specifically separates the two departments represent the substance of the employees' position in this case that sheet metal workers in the locomotive department hold exclusive right to work of their classification in the car department.

On June 26, 1957 carrier assigned a car department machinist to repair a stationary boiler in that department. In executing his assignment he disconnected some pipes. The carrier says the pipe work was incidental to the main job and required about an hour's time. The employees say it could not be done in less than several hours. Claim is made for one day at penalty rate on behalf of a sheet metal worker who was working in the locomotive department.

The carrier maintains that the car and locomotive departments have always been recognized as separate seniority points; that no sheet metal workers have been employed at the car department, and that Rule 33 of the applicable agreement therefore justified assignment of a machinist to handle the pipe work in connection with his repair job.

The pertinent part of Rule 33 reads:

"At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary."

Seniority Rule 32 provides in pertinent part:

"Seniority of employees in each craft * * * covered by this agreement shall be confined to the point employed in each of the following departments:

Maintenance of Equipment

Two sub-divisions of Sheet Metal Workers as follows:

Sheet Metal Workers (excluding molders)
Molders

The seniority lists based on actual service record, will be posted in January of each year and will be open to inspection and copy furnished the committee. Unless a written protest is made by men in active service within thirty (30) days from date of posting seniority list, dates shown thereon will not thereafter be changed."

The term "points" in Rule 33 and the words "point employed" in Rule 32 are not defined in the agreement. However, the facts and circumstances shown of record warrant the conclusion that at Markham Yard the car and locomotive departments have consistently been recognized and accepted by

the contracting parties as separate seniority points for sheet metal workers, and carmen and machinists as well, all of whom are represented by System Federation No. 99. The seniority roster for sheet metal workers is regularly entitled "Markham Locomotive Department", and separate seniority rosters are maintained for carmen and machinists in the locomotive and car departments. In similar areas at other locations on the property, separate seniority lists are maintained.

We conclude that the definition given the word "point" in Rules 32 and 33 by the parties in actual practice over the years with respect to Markham Yards indicates a denial award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1960.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3413

The Scope Rule on page 1 covers the employees who perform the work spelled out in the current agreement who are employed in the Maintenance of Equipment Department. The Markham Car Yard Power Plant is a part of the Maintenance of Equipment Department.

Rule 108, Classification of Work Rule for the Sheet Metal Workers' covers the work involved in this dispute.

Rule 32, the Seniority Rule, makes no provision for a division of seniority rosters as between the Car Shops and Locomotive Shops.

Therefor the majority erred in making Award No. 3413 and we dissent.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink