

Award No. 3871
Docket No. 3789
2-P&LE-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. - C. I. O. (Sheet Metal Workers)

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

"1. That under the provisions of the current agreement, the Carrier arbitrarily assigned pipe work to other than pipefitters of the Sheet Metal Workers' craft in the freight yards at Struthers, Ohio. The pipe work involved was performed on the following days: July 18, 19, 22, 23, 29 and 30; September 8, 9, 10, 23, 24, 25, 26, 27 and 30; October 3, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27 and 30; November 1, 4, 5, 6, 7, 11, 12, 13, 14, 18, 19, 20, 21, 22, 25 and 26; December 2 and 26; of 1957. January 9, 10, 12, 13, 14, 21, 24, 27 and 28; February 17, 18, and 19; March 31; April 1, 2, 3, 4, 7, 8, 9 of 1958. Also that the Carrier was advised that this was a running claim for any additional work performed, including any maintenance work performed in the future.

"2. That under the provisions of the current agreement and the agreement dated September 16, 1946 the Carrier deprived the following pipefitters of the Sheet Metal Workers' craft; John P. O'Hara, Jr., R. L. McGarry; T. A. McGarry, Jr.; D. W. McDonald and C. H. Williams of work that has previously always been performed by these men.

"3. That the Carrier be ordered to compensate these five (5) men for eight (8) hours pay for each day for work previously performed by these men but was and is now being performed by employees of another craft. Further, that all of this work shall be returned to the pipefitters of the Sheet Metal Workers' craft.

EMPLOYES' STATEMENT OF FACTS:

1. There is an agreement as a Memorandum Of Understanding between the parties to this dispute dated, September 16, 1946. This memorandum is by reference hereto made a part of this statement of facts.

1. The work for which the sheet metal workers are making a claim is work that is specifically included in the signalmen's agreement;
2. The claimed work is not included in the sheet metal workers' classification of work rule of the shop crafts agreement;
3. Sustentation of the claim would in reality be writing a new rule, which this Board is not empowered to do;
4. Claim presently before this Board is not the same as the claim handled on the property.

If the claim is not dismissed for lack of jurisdiction, it should be denied in its entirety for lack of merit.

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 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.

Parties to said dispute were given due notice of hearing thereon.

This case arises out of the complaint of five Pipefitters (Sheet Metal Workers) that the Carrier improperly assigned certain pipe work to Signalmen. Said work was performed in connection with the construction of a new car retarder system which is activated by compressed air in the Carrier's freight yard at Struthers, Ohio. It involved the installation of connecting air lines to the pneumatic switch machines to operate the switches which are an integral part of the car retarder system. For the reasons hereinafter stated, we are of the opinion that the instant claim is unjustified.

The basic question posed by this case is whether the work under consideration falls within the scope of the Sheet Metal Workers' Agreement or the Signalmen's Agreement. In resolving this question, we recognize that our jurisdiction is limited to the interpretation or application of the former Agreement and that we have no authority to interpret or apply the latter Agreement.

However, this limitation on our authority does not compel us to ignore the existence of the Signalmen's Agreement and the interpretation given it by the Third Division of this Board in the exercise of its statutory jurisdiction, even though its rulings are not binding upon us. It has long been recognized by the courts that the interpretation of labor agreements in the railroad industry involves more than the mere construction of a "document" in terms of the ordinary meaning of words because a labor agreement between a carrier and one craft must be read in the light of other agreements between the carrier and different crafts, taking into account usage, practice, and custom. See: *Order of Railway Conductors of America v. Pitney*, 326 U. S. 561, 566-7; 66 S. Ct. 322, 325 (1946) and cases cited therein. Accordingly, the Sheet Metal Workers' Agreement cannot be read and understood alone in matters which raise a question of over-lapping contractual work rights of the type

here involved. There must be an accommodation of that Agreement and the Signalmen's Agreement for the purpose of defining the respective scope of the two agreements and, thereby, giving effect to the evident aim and intention of each.

In applying the above principles to the facts underlying the instant claim, we have reached the following conclusions:

Rule 126 of the Sheet Metal Workers' Agreement on which the Claimants chiefly rely reads, as far as pertinent, as follows:

"Sheet metal workers' work shall consist of . . . pipe-fitting in shops, yards, buildings, on passenger coaches and engines of all kinds; . . . the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steampipes; . . . and all other work generally recognized as sheet-metal workers' work."

A careful reading of the above quoted part of Rule 126 reveals that work which is an inseparable part of the installation of a car retarder system (as is here the case) is not expressly specified therein. Thus, there is no clear indication that the parties intended to bring the work here in dispute under the scope of Rule 126. On the other hand, we are impressed by the fact that the Third Division of this Board has consistently held that such work comes within the scope rule of the Signalmen's Agreement. See: Awards 4712, 5218, and 6203 of the Third Division. Moreover, without attempting to interpret the Signalmen's Agreement, we cannot be blind to the fact that it explicitly "covers rates of pay, hours of service and working conditions of all employees in the Signal Department . . . engaged in the construction, installation, inspection, testing, maintenance and repair either in the signal shop or field of . . . Car retarder systems . . .". (Emphasis ours.)

Furthermore, the Signalmen's Agreement became effective as of April 16, 1951, and the Sheet Metal Workers' Agreement was revised as of September 1, 1952, or about sixteen months later. It was, therefore, known to all interested parties at the time the latter Agreement was revised that work directly related to the construction of a car retarder system was specifically covered by the former Agreement. The record before us does not show that any attempt was made by the Sheet Metal Workers at that time to include such work, or any part thereof, in the scope of their Agreement. Nor does the available evidence permit a finding to the effect that there exists a custom or practice at the Carrier's property under which such work was generally assigned to Sheet Metal Workers in the past. Hence, it cannot be said that such work constitutes "work generally recognized as sheet-metal workers' work" as contemplated in the last sentence of Rule 126.

In further support of their claim, the Claimants rely on the "Memorandum of Understanding Allocating Work in the Motive Power and Maintenance of Way Departments", dated September 16, 1946. Yet that Memorandum only deals with the allocation of sheet metal work performed by Sheet Metal Workers of the two departments but does not purport to establish a line of demarcation between the work jurisdiction of Sheet Metal Workers and Signalmen, respectively. Hence, the Memorandum sheds no light on the disposition of this case.

In summary, we hold that the work here in dispute does not come within the scope of the Sheet Metal Workers' Agreement. See: Awards 1835, 2810, 3193, 3195, and 3604 of this Division.

Since we are of the opinion that the instant claim is unjustified on its merits, it becomes unnecessary to rule on the procedural objections of the Carrier and we express no opinion on the validity thereof. However, we take notice of the fact that both the former representative of the Signalmen (Brotherhood of Railroad Signalmen of America) and the present one (District 50, United Mine Workers of America) were duly notified of the pendency of the instant dispute and afforded an opportunity to attend the hearings held in connection therewith.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November, 1961.

LABOR MEMBERS DISSENT TO AWARD NO. 3871

The work involved in this dispute was air pipe work in the yards.

The Preamble of the current agreement in effect between the parties to this dispute reads as follows:

"It is understood that this agreement shall apply to those who perform work specified in this agreement in the maintenance of equipment, maintenance of way, **signal** maintenance, telegraph maintenance **and all other departments** wherein work covered by this agreement is performed." (Emphasis ours.)

Rule 126 of the current agreement reads in part:

"Sheet Metal Workers' work shall consist of * * * pipe-fitting in shops, yards, buildings, * * * the bending, fitting, cutting, threading, brazing, connecting and disconnecting of **air**, water, gas, oil, and steam pipes * * *." (Emphasis ours.)

Special Rule 126 includes said work, therefor the award of the majority is erroneous.

/s/ **Edward W. Wiesner**
Edward W. Wiesner

/s/ **C. E. Bagwell**
C. E. Bagwell

/s/ **T. E. Losey**
T. E. Losey

/s/ **E. J. McDermott**
E. J. McDermott

/s/ **James B. Zink**
James B. Zink