

Award No. 3876

Docket No. 3026

2-UP-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Sheet Metal Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current applicable agreement the Carrier improperly assigned members of the Firemen and Oiler craft to perform the connecting and disconnecting of pipe and hose on oil tank car at Los Angeles Power House.
2. That accordingly the Carrier be ordered to compensate Sheet Metal Worker C. W. Reiger and Sheet Metal Worker Helper Harold Mason in amount of sixteen hours, four hours each on January 27, 1957 and January 29, 1957 at their regular rate of pay per hour at the time of violation.

EMPLOYEES' STATEMENT OF FACTS: On or about January 27, 1957, carrier spotted an oil car at the East Los Angeles Power House for the purpose of supplying oil to power house boilers while the regular fuel line to the power house was temporarily out of service, and being repaired by water service employees.

The work in question involved the connecting of a large rubber hose to the outlet of fuel oil tank plus the connecting of pipe and additional hose to a temporary steam line; for the purpose of heating the oil.

This dispute has been handled with the carrier up to, and including the highest officer designated by the company, with the result that they have declined to adjust it.

The agreement effective September 1, 1949 as it has been subsequently amended together with special agreement governing water service employees in the engineering department and dated March 27, 1935 is controlling.

POSITION OF EMPLOYEES: It is submitted that the action of the carrier in this dispute is contrary to the provisions of the rules of current

For reasons heretofore stated, the claim of named switchmen for a yard day's pay on specified dates should be and hereby is denied. However, that part of the claim for all subsequent dates when their claims of like character were declined by carrier cannot be determined under the evidence presented in this record, so they should be and hereby are dismissed without prejudice to either of the parties."

And in **Third Division Award 6887** (Referee Rader), that Division sustained a part of a claim of the clerks' organization, finding that:

"We therefore, find Claim (a) should be sustained in part, that is, that this work, although not covered in the Scope Rule, has by custom and practice of years standing become a part of clerk's duties, and this finding relates to revenue cars only at the scale designated."

However, the Board also held:

"Claim (b) is denied by reason of insufficient showing that the clerk on duty at the time in question could not have weighed these two revenue cars."

That well established principle is equally applicable to this present claim and, by itself, requires a denial thereof.

There is no basis for the organization's contention that sheet metal workers have the exclusive right to perform the work in question. Accordingly, the entire claim, which is predicated upon that erroneous assumption should be denied for its 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 claim is filed in behalf of Sheet Metal Worker-Water Service employes who are employed at Los Angeles in the Carrier's Engineering and Maintenance Department. Although the claim refers to the connecting and disconnecting of both pipe and hose, the record discloses that the disputed work performed on specified dates by power house employes in the craft or class of "firemen and oilers" consisted only of connecting and disconnecting hose. This task was done for the purpose of unloading fuel oil from tank cars to supply the power house. The installation of the pipe necessary for the temporary unloading arrangement involved in this case was performed by Water Service employes.

The disputed work is not specifically stated in the governing scope rule for employes in the claimants' craft and class. The jurisdictional settlement cited by the Organization does not control the present case since this settlement was presented to and accepted by the Carrier only for a department

other than that in which the claimants are employed. Further, it has not been shown that the connecting and disconnecting of hose incidental to the unloading of fuel oil from tank cars has been performed exclusively by Water Service employees in the Sheet Metal Worker craft as a matter of past practice.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1961.

LABOR MEMBERS' DISSENT TO AWARD NO. 3876

The work in this dispute was the connecting and disconnecting of hose used to convey oil.

Rule 109 of the agreement reads in part:

"Sheet Metal Workers' work shall consist of * * * connecting and disconnecting of air, water, gas, oil and steam pipes * * *."

Webster's New Collegiate dictionary defines "hose" as "A flexible pipe, as of rubber for conveying fluids."

Under the date of November 21, 1953 the general chairmen for the Sheet Metal Workers and Firemen and Oilers Organizations submitted to the carrier a settlement of a jurisdictional dispute which reads in part as follows:

"A jurisdictional dispute exists between the Sheet Metal Workers and the Brotherhood of Firemen and Oilers on the Union Pacific pertaining to the connecting and disconnecting of pipe and hose on oil cars.

"In accordance with the jurisdictional agreement of February 14, 1940* the undersigned General Chairmen have met and agreed that the connecting and disconnecting of all pipes and hose on oil cars properly belongs to the Sheet Metal Workers, and that this work shall be performed by them. * * *."

Under date of February 12, 1954 the carrier advised it had accepted the jurisdictional dispute settlement applying to the work in dispute in this docket, advising that "These agreements have been accepted and referred to all concerned for placing in effect. * * *."

The effective agreement between the parties to this dispute is applicable to all departments of the railroad—it contains no restrictive clauses confining it to any specific department.

Therefor the majority erred. The claim should have been sustained.

/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