

Award No. 3939

Docket No. 3479

2-AT&SF-BM-'62

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. 97, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L. - C. I. O. (Boilermakers)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Western Lines)

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the terms of the current agreement the Carrier improperly assigned work of the Boilermakers' Classification to Sheetmetal Workers at Albuquerque, New Mexico.

2. That accordingly the Atchison, Topeka and Santa Fe Railroad be ordered to additionally compensate employes of the Boilermakers' craft at their applicable straight time rate of pay for the aforesaid violation as follows:

Andres Santiago, Boilermaker Welder.....	80 Hours
Antonio Ortiz, Boilermaker.....	80 Hours
Total Hours	<u>160 Hours</u>

EMPLOYEES' STATEMENT OF FACTS: At Albuquerque, New Mexico, the Atchison, Topeka and Santa Fe Railway maintains a force of boilermakers and helpers in their Albuquerque Diesel Shops, and Centralized Work Equipment Shop, who hold seniority at that point in accordance with the Rules Agreement. The said Atchison Topeka and Santa Fe Railway will hereinafter be referred to as the carrier.

On or about October 28, 1957, the carrier elected to add to their Diesel Locomotive Shop an additional scaffold between two adjoining tracks, in order to take care of additional diesel locomotives at said Albuquerque repair shops. The scaffold is about 30 feet in length—99 inches wide, and five feet in height from floor level. Said scaffold is constructed entirely of channel iron $\frac{3}{8}$ "x9"—angle iron 3"x3"x $\frac{3}{8}$ " used for frame work, and floor or deck support. Said scaffold has steps spaced about 12" apart from floor level to deck level, steps are fabricated from $\frac{3}{8}$ " or $\frac{1}{2}$ "x9" Channel iron.

Top of scaffold, also referred to as the "deck" is made of 5/16" plate metal welded to frame or angle iron. Fundamental supports for the frame-

tion that the building and installation of diesel platforms by Shop Extension Department forces is confined to the particular points where such forces had previously installed that particular fixture or item of equipment. Furthermore, and as shown in the carrier's statement of facts, the seniority of Shop Extension Department employes is not restricted to a single point, but under Rule 28(b) 2 extends over a grand division, or in this case the entire Western Lines, including Albuquerque, the location involved in this dispute.

It will be apparent from the above that the handling complained of in this dispute stems from an established practice that has extended over a period of more than thirty (30) years and throughout revisions of the agreement without abrogation. The actions of the employes and their representatives clearly denote that they are through the medium of their claim in the instant dispute, requesting the Board to grant them that which they have, by their own actions, previously recognized is not required under the agreement rules.

In conclusion, the carrier respectfully reasserts that the employes' claim in the instant dispute is wholly without support under the governing agreement rules and the long-standing practices thereunder, and should, for reasons expressed herein be dismissed or denied in its entirety.

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.

In 1957, the Carrier decided to install a certain Diesel Repair Platform (DRP) in its Diesel Repair Shops at Albuquerque, New Mexico. This DRP was one of five such DRPs which had previously been constructed and installed by Shop Extension Department (SED) forces, who are represented by the Sheet Metal Workers' International Association, at the Carrier's Diesel Repair Shops at Argentine (Kansas City), Kansas. The DRP here involved (together with the other four DRPs) was dismantled and removed from the Argentine shops by SED forces and shipped in sections to the Albuquerque shops where SED forces were also assigned to reconstruct and install it on or about October 28, 1957. Said DRP is thirty feet long (excluding the steps at each end), over five feet high, and eight feet wide. It is secured in place by ten heavy studs which are permanently anchored to the floor of the shop building and which extend up through six steel channels forming the base of the platform.

The two Claimants who are Boilermakers contend that the work performed in connection with the building of the scaffold of the DRP at the Albuquerque shops should have been assigned to them and was improperly assigned to SED forces.

For the reasons hereinafter stated, we are of the opinion that the instant claim is without merit.

1. The Claimants chiefly rely on Rule 61 of the labor agreement which

contains a detailed description of the various types of work coming under the jurisdiction of the Boilermakers' craft. However, Rule 61 is qualified by a special rule incorporated in Item 23 of Appendix B to the agreement. Said Item supersedes, in pertinent instances, the general rule as to work jurisdiction which otherwise might be applicable to the dispute at hand. See: Awards 2251 of this Division and 6651 of the Third Division.

Item 23 reads, as far as pertinent, as follows:

"The classification of work rules of the General Agreement shall not change existing practices of handling certain classes of work by . . . Shop Extension Forces . . . it being understood that such work may be continued to be performed by employes of the different classes of either group until and when survey has been made and a definite line of demarcation can be agreed to with the organizations involved."

The pivotal question which presents itself for adjudication is whether a practice of assigning to SED forces the construction and installation of DRPs of the same or substantially similar type as the one under consideration, including specifically the component work here in dispute, existed prior to the effective date of the labor agreement (August 1, 1945) and whether such practice has consistently been followed thereafter. The answer is in the affirmative.

The evidence on the record considered as a whole reveals beyond a doubt that SED forces have performed all the work connected with the construction and installation of such DRPs in numerous instances at various work locations within the geographical area of seniority district covered by the labor agreement, both prior to and after August, 1945, until the instant grievance arose in October, 1957. The Claimants have not contested the Carrier's statement that in none of those instances did the Boilermakers file a complaint or claim. Their continued failure to protest the practice must be construed as an acceptance thereof.

Accordingly, we hold that a firmly established practice well-known to and accepted by all interested parties under which SED forces were assigned work of the same or substantially similar nature as that here complained of has existed at the Carrier's property and that such practice has been observed for a considerable period of time extending beyond the effective date of the labor agreement. Said practice has therefore, become a part of the agreement—just as if it had been explicitly provided therein. See: Award 3873 (Docket 3838) of this Division. The fact that no DRP of the type here involved was ever installed at the work location in question (Albuquerque shops) is immaterial. In the absence of a specific contractual provision or a recognized past practice to the contrary, the labor agreement necessarily applies to the entire geographical area or seniority district covered by it and must be interpreted uniformly with respect to all work locations situated within such area or district. See: Award 3495 of this Division. The labor agreement does not contain any provision exempting the construction and installation of DRPs of the type here involved from the application of the practice as found by us hereinbefore. Nor does the record reveal any contrary past practice. This point is more fully discussed below. Since the SED forces who performed the work under consideration hold Grand Division seniority on the Carrier's Western Lines, including Albuquerque, New Mexico, pursuant to Rule 28(b) (2) of the agreement, the assignment of the work here in dispute to them was

controlled by the above discussed existing practice which has become a part of the agreement.

Hence, we hold that the Carrier was rightfully entitled, on the basis of the existing past practice and in accordance with Item 23, to assign the work in question to SED forces instead of to the Claimants.

2. In further support of their claim, the Claimants rely on Item 1 of Appendix B to the labor agreement which provides, in essence, that controversies as to craft jurisdiction shall first be settled by the contesting organizations and that existing practices shall be continued until the Carrier has had a reasonable opportunity to reach an understanding with the organizations involved. It is undisputed that certain DRPs were constructed and installed by Boilermakers at the Carrier's Albuquerque shops several years ago. The Claimants argue, therefore, that a practice of assigning such work to Boilermakers has existed at said shops which the Carrier violated in the instant case.

The flaw in that argument is that those DRPs were not of the same or substantially similar type as the one here involved. The record shows that they were portable and not permanent platforms. They were not firmly secured to the floor of the building in any manner but could be moved from one pit or track location to another by use of a shop or roundhouse traveling overhead crane. They were also smaller and considerably lighter than the DRP under consideration. In brief, the construction and installation of those portable DRPs involved a different type of equipment than that with which we are here concerned. The Claimants themselves recognize this difference because they do not claim jurisdiction for Boilermakers over the fastening of the scaffold in question to the floor of the building (Organization Exhibit 6, p. 2). Moreover, the difference was emphasized by Local Chairman Galvan of the Sheet Metal Workers who, in claiming jurisdiction over the installation of the DRPs at Albuquerque, New Mexico, stated: "This being a permanent installation this work is considered Shop Extension" (Carrier Exhibit E; emphasis ours).

Accordingly, we are of the opinion that whatever practice may have existed with respect to the construction and installation of portable DRPs at the Carrier's Albuquerque, New Mexico, shops has no bearing on the disposition of the instant claim which concerns a permanent DRP. As a result, we fail to see a violation of Item 1 of Appendix B on the part of the Carrier.

3. Finally, the Claimants rely upon a letter, dated January 6, 1959, from General Chairman Duffey of the Sheet Metal Workers' Association (Organization Exhibit 1) in which he waived jurisdiction over the work here in dispute. The waiver was executed many months after the work in question was performed. It was also restricted to the Carrier's Diesel Repair Shops at Albuquerque, New Mexico, and expressly did not apply to any other work location covered by the labor agreement. It is doubtful whether the waiver can be applied retroactively to the instant dispute. There is no need to resolve this issue. In any event, the waiver, if assigned the effect contended for by the Claimants, would, for all practical purposes, constitute a modification of the existing and valid practice through unilateral action instead of through mutual agreement or through the use of the procedure prescribed in Item 23 of Appendix B. For this reason, the waiver can have no effect and force.

4. Since we have denied the instant claim on its merits, it becomes un-

necessary to rule on the Carrier's procedural objections and we express no opinion on the validity thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1962.