

Award No. 4463
Docket No. 4311
2-CRI&P-BK-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Blacksmiths)**

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the carrier on March 8 and 9, 1961 improperly assigned to the Sheet Metal Workers' Craft the work belonging to the Blacksmiths' Craft of making pipe clamps, pipe brackets and pipe hangers to support pipe-line from power plant to backshop, Silvis, Illinois.
2. That accordingly the carrier be ordered to compensate Blacksmith Lee Putt and Blacksmith Helper Kamiel Dupre, for eight (8) hours on March 8 and eight (8) hours on March 9, 1961 at their applicable straight time hourly rate of pay. This compensation is to be in addition to any compensation they may have received for these two days viz: March 8 and 9, 1961.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Rock Island and Pacific Railroad, hereinafter referred to as the carrier, maintains a shop at Silvis, Illinois, the facilities include a recent rearranged modern blacksmith shop, where Blacksmith Lee Putt and Blacksmith Helper Kamiel Dupre, hereinafter referred to as the claimants, are employed to perform among other duties the making of pipe clamps, pipe brackets and pipe hangers, the work which is involved in this dispute. Blacksmith Lee Putt has seniority date of March 16, 1925 and Blacksmith Helper Kamiel Dupre has seniority date of December 13, 1922 and were assigned to a five (5) day work week — Monday, March 7, through Friday, March 11, 1961. On March 8 and 9, 1961, these two (2) claimants were on duty in the blacksmith shop and the carrier assigned two (2) pipefitters and one (1) pipefitter-helper to cut, bend and shape materials for pipe hangers to support overhead pipe line for gas.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the

Take this case for example; here neither claimant was damaged, yet the organization seeks a payment of 32 hours total—strictly as a penalty. As we have shown the portion in dispute here involved the cutting of 14 hangers to length, drilling a ½-inch hole in each end and making two cold 90° bends. Even if one were to be most liberal as to the time consumed in performing the disputed work four hours total for two men would more than cover the whole thing.

Yet under the erroneous “penalty” concept the organization here calls for a 32-hour penalty, although no one was damaged at all and the parties have not as yet seen fit to write a penalty provision in their agreement. The claim is invalid under time limits, under lack of merits and there is no contractual provision providing for the penalty sought as no one was damaged and even if these claimants were damaged, which they were not, the recovery sought is over four times the actual amount involved.

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.

Claimants in this dispute allege that the work of making pipe clamps, brackets and hanger to support a pipe line from Carrier’s power plant to the backshop at Silvis, Illinois, was improperly assigned to Sheet Metal Workers. They claim compensation for two days at 8 hours each.

Carrier first raises the procedural point that there has been a violation of the time limit rule of Article V (c) of the August 21, 1954 Agreement in that Claimants did not institute proceedings before this Division within nine months.

We have had occasion to consider this same objection in other Awards and adhere to our Findings in those Awards. As we said in Award No. 2285:

“The filing of the declaration of intention to file the appeal with the proper Division lodges jurisdiction of the dispute with the Board. From that time on the progressing of the dispute is subject to the rules of the Board.”

This record shows that the declination of the Carrier’s highest officer designated to handle disputes was dated August 14, 1961, and that the letter of intention to file its ex parte submission with this Division from the Organization was dated May 11, 1962. This was sufficient to institute proceedings within the nine month limitation set out in Article V (c), and accordingly, this objection of the Carrier is overruled.

Carrier raises the further objection that there has been no third party notice given to the Sheet Metal Workers involved, and that consequently we are without jurisdiction to entertain this dispute under Sec. 3, First (j) of the Railway Labor Act.

This presents the issue of whether or not the Sheet Metal Workers at Silvis are "employees involved" to whom this Division must give notice before proceeding with the resolution of this dispute.

A review of the Awards of this and other Divisions of the Board, together with the judicial pronouncements on the subject leads to the conclusion that this has been a troublesome problem. It seems to be established that if a sustaining award might lead to the sanction of a Court to enforce it, and that order would result in dispossessing a person from his job, then that person would be an "employee involved" and would be entitled to notice under the Act.

On the other hand, if the dispute involved a single instance where a person's job had been intruded upon by another but briefly, then that person would not be entitled to notice.

Further, nowhere in the Railway Labor Act is this Board or its Divisions charged with the responsibility of adjusting true jurisdictional disputes, nor to order Carriers to assign employes to specific work. Part of our mandate is contained in Section 2 (1) of the Railway Labor Act which reads in part as follows:

"* * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions."

Relating these matters to the dispute at hand, we do not consider the Sheet Metal Workers at Silvis to be "employees involved" as contemplated by the Act. We have before us a controlling agreement and the parties who subscribed to it. Our function is to determine whether or not under that agreement the Claimants have a meritorious cause.

The Memorandum of Interpretation and Understanding concerning Rule 90 of the controlling agreement is a part of the agreement with which we are here concerned. It is fully set out at pp. 1 and 2 of the Carrier's Rebuttal.

We are not in accord with the Organization's interpretation of this memorandum.

This Interpretation and Understanding pegged six Sheet Metal Workers into jobs which included making pipe clamps. When these six men vacated their positions, these were to revert to Sheet Metal Workers. The vacation of these six positions did nothing to augment the Classification of Blacksmiths' work.

However, under the last paragraph of the Interpretation and Understanding, when other positions of those making pipe clamps at Silvis became vacant, these were to be filled by Blacksmiths.

Thus, we have a continuing divided assignment of work, and this record shows that the work here involved was assigned on a divided basis. We cannot say that the Claimants were deprived of any work to which they had an exclusive right.

AWARD

Claims 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, 1964.