

Award No. 4467

Docket No. 4254

2-B&O-SM-'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. 30, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Sheet Metal Workers)**

THE BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement at East Salamanca, New York in August 1960 when it abolished all positions of Sheet Metal Workers' and assigned Sheet Metal Workers' work to other than Sheet Metal Workers.
2. That accordingly, the Carrier be ordered to compensate Sheet Metal Workers P. Povlock, C. C. Rogers, W. A. Jonas and R. C. Williamson for all time lost due to the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: Prior to August 19, 1960, the following sheet metal workers were employed by the Baltimore and Ohio Railroad Co., hereinafter referred to as the carrier, in its East Salamanca, New York Shop to perform sheet metal workers' work.

P. Povlock	— 7:00 A.M. to 3:00 P.M. — Mon. thru Fri.
C. C. Rogers	— 3:00 P.M. to 11:00 P.M. — Fri. thru Tues.
R. C. Williamson	— 11:00 P.M. to 7:00 A.M. — Wed. thru Sun.
W. A. Jonas	— Relief — All shifts — Sun. thru Thurs.

The aforementioned employees are hereinafter referred to as claimants.

On August 19, 1960 carrier abolished the aforesaid sheet metal worker positions and furloughed the aforementioned employees. However, due to one of the employees being on vacation, the complete abolishment of sheet metal worker positions at this point was not accomplished until August 30, 1960.

Although carrier alleged that the abolishment and subsequent furlough was "due to general decline in business" no employees of other crafts employed at the point were furloughed, and no reduction was made in the number of locomotives dispatched, which in August 1960 amounted to 1036 road units, 136 yard units, 9 monthly and one annual inspection.

abolished because volume of work did not justify retention of two employees at that point. The carrier is not required by the agreements to retain a position when there is not sufficient work available to justify it. No violation of the applicable agreements being shown, this claim lacks merit.

AWARD

Claim denied."

In this Division's Award 3413 (System Federation No. 99 v. IC) (Referee Carey) where sheet metal workers claimed because of pipefitters' work performed by machinists that carrier argued in part, as follows:

" * * * 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 claim in Award 3413 was denied.

CARRIER'S SUMMARY.

In this case the carrier relies upon an application of Article VII of the "Addendum to Agreements" captioned "Mechanics Performing Work of Another Craft" effective November 1, 1954. The record in this case is self-evident and beyond dispute. There was not sufficient work at East Salamanca to justify employing mechanics of the pipefitters' craft.

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.

Article VII of the August 21, 1954 National Agreement reads as follows:

"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 they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

Between August 19 and August 29, 1960, Carrier abolished all Sheet Metal Workers' positions at East Salamanca, New York.

The Organization contends that the abolition of these positions was arbitrary and without foundation in fact since there remained sufficient Sheet Metal work at East Salamanca.

A conference was held at Punxsutawney, Pennsylvania, on November 22, 1960 and the following joint statement of agreed upon facts was made:

"Between August 19 and 30, 1960 all positions of Sheet Metal Workers were abolished at East Salamanca, New York, during which time other than Sheet Metal Workers were assigned to perform Sheet Metal Workers' work on tricks not covered by Sheet Metal Workers, and subsequently all Sheet Metal Workers' work was assigned to other than Sheet Metal Workers."

The Organization objects to our consideration of Ex. "B" and Ex. "C" attached to the Carrier's submission as violative of our Rules in that these Exhibits were not submitted on the property during the processing of this dispute. The Carrier asserts that these items were submitted on the property. We decline to resolve this conflict for the reason that our resolution of this dispute can be accomplished without consideration of these Exhibits.

The Organization in its Submission contends that its Ex. "A" attached to its Exhibit "1" sustains its burden of proof that there was sufficient Sheet Metal Workers' work at East Salamanca to support its position, and therefore the burden of proof shifted to the Carrier. Technically, the burden of proof would not shift, but the burden of going forward to refute a prima facie case would fall on Carrier if the Organization makes a prima facie case.

We have examined the contents of the Exhibit which the Organization refers to, together with the Classification of Work Rule, and other awards of this Division.

The majority of the work contained in this Exhibit is the cleaning of sand traps and testing of sanders. Other work consisted of the coupling and testing of hoses which is not the exclusive work of Claimants' craft. True, there was some Sheet Metal work performed, but the record does not indicate that it was sufficient to justify the claim as made.

Claimants have failed to sustain their burden of proof and the Claims must be denied.

AWARD

Claim 1: Overruled.

Claim 2: 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.