



Award No. 4788

Docket No. 4665

2-AT&SF-SM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Eastern Lines)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current collective Agreement it was improper for the Carrier to assign other than Sheetmetal Workers assigned to the Carrier's Water Service Department to install, maintain and repair Propane gas tanks and gas pipe lines running from the Propane gas tanks to automatic type switch heaters on Carrier's Eastern Division.

2. That accordingly, Carrier be ordered to additionally compensate Sheet Metal Workers A. F. Butcher and Shelly Ryan and Sheet Metal Worker Helpers H. C. Olin and W. Wise at their applicable rate for each day Carrier's records indicate other than Sheet Metal Workers assigned to Carrier's Water Service Department were used to perform the work.

EMPLOYES' STATEMENT OF FACTS: On or about December 3, 1962, the Atchison, Topeka and Santa Fe Ry. Co., hereinafter referred to as the carrier assigned signal department employes to install automatic gas switch heaters on its eastern division. The installation consisted of the following:

1. Install large propane gas storage tanks.
2. Attach burner to rails.
3. Lay pipe line from storage tank to burners.
4. Install burner shield over burner to force heat against rail.
5. Install regulators, pressure switches, relief valves, solenoid valves and other appurtenances necessary to regulating the flow of gas to the burner.

switch heaters herein involved, which as shown in the tabulation on page 16 hereof was a total of 365 hours for both employees.

Carrier further states that each of the claimant employees was regularly assigned and worked full time on each of the days on which signal forces performed work of installing switch heaters at the various locations listed above, and therefore suffered no monetary loss by reason of the handling given.

In conclusion, the carrier states that the employees' claim in the instant dispute should be either dismissed or denied for the reasons expressed herein.

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.

Rule 83 provides that sheet metal workers' work consists of specified types of work "in shops, yards, buildings and on passenger coaches and engines of all kinds". It is not shown that the work claimed here was performed in any of those areas.

The Memorandum of Understanding effective January 1, 1950 simply provides for the proper division of sheet metal workers' work among the employees of that craft in three departments. It does not modify or expand the provisions of Rule 83.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1965.

LABOR MEMBERS DISSENT TO AWARD 4788

The majority was in gross error when they concurred with the referee's findings:

"Rule 83 provides that sheet metal workers work consists of specified types of work 'in shops, yards, buildings and on passenger

coaches and engines of all kinds.' It is not shown that the work claimed here was performed in any of those areas.

The Memorandum of Understanding effective January 1, 1950 simply provides for the proper division of sheet metal workers work among the employes of that craft in three departments. It does not modify or expand the provisions of Rule 83."

Such lack of treatment of the dispute and claim of employes before this division reflects a cavalier attitude toward the spirit and intent of the Railway Labor Act and the administrative machinery provided for under this act to the National Railroad Adjustment Board, Second Division, namely, the general purposes 151 a. (5):

"To provide for the prompt and orderly settlement of all disputes growing out of grievances or the interpretation or application of an agreement * * *"

152. First:

"* * * shall be the duty of all carriers, their officers, agents and employes to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions and to settle all disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employes thereof."

The second paragraph of the findings is lacking in specificity for this conclusion and actually places the employes who are required under the act to proceed to this division in an absurd due process of recourse.

The facts in the record unambiguously reflect that the claimants under their dispute and claim and in their record of submission and statement of facts never argued for the expansion of the agreement.

On page 10 of the carrier's submission we find a reproduction of carrier's letter of September 25, 1963, addressed to General Chairman Duffey which we quote in pertinent part:

"Dealing first with past practice, the use on this property of the device in question is relatively new. On the seniority district involved in this claim, namely, the Eastern Division, the installation of the so-called switch heaters did not commence until the latter part of the calendar year 1962. I find that this being an integral part of the signaling system of train control, the signal department employes were assigned the work of making the complete installation. Therefore, on the seniority district of the claimants in this case, the past practice you mentioned consisted of having the work in issue performed by signalmen, not division water service employes."

This in itself repudiates the majority's limited findings that the work must be performed "in shops, yards, buildings and on passenger coaches * * *".

The claimants involved were not restricted to seniority points as their seniority was circumscribed within a seniority district, namely, the Eastern Division of this carrier and the record reveals the work contended for in this dispute was within the confines of this seniority division. Therefore, a request for extension of the agreement would have been unnecessary and absurd.

Further proof of this point is the carrier's own statement, in pertinent part on page 11 of their submission:

" * * * several test installations were made. Being a new thing, some of these installations were made by the combined use of several classes or crafts of employes on a given unit. The combined force used for some units consisted variously of (1) signalmen, (2) Shop Extension forces (3) division water service employes and (4) MofW Employes. Presumably the use of division water service forces to do some of the work on some of these earlier installations on these other seniority districts gives rise to your current view that past practices has been established. * * * "

The employes based their case on the best evidence before this division — the agreement, which is projected in excerpts all through the record.

Further, the same set of general rules, on the carrier property dealing with the Electrical Workers craft was presented to this division and a sustaining award was rendered in favor of the employes. Note Award 4613. The majority, in face of this sustaining award chose to give little or no prudent consideration to precedent or the apparent facts of this record.

Further, it appears that the majority also ignored the carrier's own admission of inconsistency and promiscuous assignment of this sheet metal workers work not only to the Signal Department, but also to the Track Department, (Maintenance of Way people) and further, assigned the installation of the pipes and tank, in some instances, to the Skelly Oil People, employes who have no seniority or contractual right to this work.

Page 12 of carrier's rebuttal reads:

" * * * the B&B forces performed certain work in connection with that installation and the Skelly Oil People installed the tanks, in accordance with their usual custom."

This lack of consideration and indifference to the record and the previous conclusion by this board in Award 4613 has caused the majority to err in their findings in this instant case and therefore, we are constrained to dissent.

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