

Award No. 5327
Docket No. 4987
2-EJ&E-SM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The Carrier (E.J.&E. Ry. Co.) violated the provisions of the current Agreement when they improperly assigned other than Sheet Metal Workers to remove Water Coolers from stored Diesel Engines outside of the Roundhouse at Gary, Indiana, to bring them in the shop to be tested and repaired, also the Water Coolers to be tested and repaired required the dismantling and taking off of all the outside sheet metal jackets made of approximately 16 gauge sheet metal which is and has in the past until this instance, been Sheet Metal Workers' work on this Carrier.

2. We respectfully request that the use of other than Sheet Metal Workers to perform this type work be discontinued.

3. That Sheet Metal Workers Calvin Michaels, John Feder, Jr., Homer Gholston and Lon Martin each be additionally compensated for eight (8) hours' pay at time and one-half rate, and Richard Vezena for five (5) and one-half hours at rate of time and one-half rate of pay for these violations.

4. This is a continuous claim until satisfactorily disposed of.

EMPLOYEES' STATEMENT OF FACTS: The Elgin, Joliet and Eastern Railway Co., hereinafter referred to as the Carrier, maintains at Gary, Indiana, Maintenance Shops and related buildings for the repair and service of its equipment.

Sheet Metal Workers Calvin Michaels, John Feder Jr., Homer Gholston, Lon Martin and Richard Vezena, hereinafter referred to as the Claimants, are regularly employed by the Carrier at Gary, Indiana, as Sheet Metal Workers to perform Sheet Metal Workers' work.

AWARD

Claim denied."

CONCLUSION

The Carrier feels it has shown that none of the three allegations in Part 1 of the Organization's Statement of Claim finds support either in the agreement or by past practice. In the Carrier's opinion none of these allegations has any foundation whatsoever and, accordingly, a denial award is respectfully requested.

Part 2 of the Statement of Claim, of course, turns on the disposition of Part 1 and should be denied for the same reasons.

With respect to Part 3, the Carrier feels that even if all or any part of Part 1 is sustained, the claimants are not entitled to monetary damages, because, with our shortage of sheet metal workers, they all performed eight hours service on each of the claim dates and were fully compensated therefor, in accordance with the controlling agreement. Many awards of your Board have held that in the absence of specific penalty provisions, a claimant suffering no pecuniary loss as a result of an alleged agreement violation is not entitled to reparations. (See Second Division Awards 3522, 3672, 3927, 3938, 4082, 4083.)

The claims in Part 3 are further improper in that they ask payment at the time-and-one-half rate. Your Board has ruled on many occasions that the proper method of payment for work not performed is at the pro rata rate. (See Second Division Awards 3177, 3272, 3273, 3274, 3256, 3405, 3406.)

The Carrier requests that your Board deny the Organization's claim in its entirety.

All information and data contained herein has been discussed with the Organization either in conference or by correspondence. Any allegation to the contrary which the Organization may proffer in its rebuttal is completely without foundation.

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 waived right of appearance at hearing thereon.

An electrician and electrician apprentice were assigned to repair a number of water coolers that were attached to locomotive engines. Before making the repairs, they removed the coolers from the engines, carried them to the repair shop and there took off the coolers' outside jackets. The present claim does not challenge the assignment of the actual repair work but rests on the theory that the other duties mentioned above should have been performed by sheet metal workers rather than by electricians.

Each cooler is taken from the locomotive by removing the sheet metal band, bolts and nuts that held it in place in a bracket affixed to the side of the cab. In the process, according to Petitioner, it is also necessary to close two gas valves and disconnect a copper drain pipe. After carrying the cooler to the shop, the electricians remove the screws that attach the sheet metal jacket to the cooler and then proceed to make the necessary repairs.

There is no basis whatever for finding that sheetmetal workers must be used to carry coolers from the engines to the shop. There is also considerable question whether the work of removing a cooler from a bracket belongs to claimants, particularly since we are satisfied that no dismantling of the bracket or of parts is involved in the process. General statements by sheetmetal workers that they had always done that work are not helpful since they do not present facts proving exclusivity of performance.

While it is clear that the removal of the cooler's jacket constitutes sheet metal work and even if it is assumed that removal from the bracket also belongs to Claimants, we are not satisfied that the record establishes that in point of volume, time, skill and importance, such duties may not be performed by electricians charged with the primary duty of repairing water coolers. The disputed work appears to be of a routine nature and incidental to the primary repair duties.

The Board recognizes the organization's concern regarding assignments that cross craft lines and subject them to careful scrutiny on a case-to-case basis. We are not persuaded by the facts presented in the present case that Petitioner has established that a significant amount of work is in dispute or that the assignment is part of a whittling-away process or constitutes a threat to the Agreement.

In the present situation, no justification is perceived for not following the well established principle that an employe may perform routine work that is incidental to his primary duties. See Awards 1790, 1933, 1996, 2511 and 4962 of this Division as well as Third Division Awards 10024 and 15149. We therefore will deny the claim. This Award does not of course pass upon the question of which employes are entitled to install, repair and test coolers.

While it may not be a controlling point in this case, it would not seem inappropriate to emphasize again for the guidance of all parties that evidence as to the exact nature, quantity and importance of disputed duties should be fully and clearly presented well before the rebuttal stage.

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 December, 1967.

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