



Award No. 5618
Docket No. 5486
2-CB&Q-SM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. The carrier violated the provisions of the current agreement when they improperly assigned other than Sheet Metal Workers to use a drill for drilling holes for insertion of bolts which were tightened with (tools) wrenches, to assemble 20 gauge sheet metal material racks in the Mechanical Department, building No. 7 at West Burlington Shops, on March 17 and 18, 1966.

2. That you compensate Sheet Metal Workers O. O. Diderikson, D. L. Vollmer and E. E. Smith, each in the amount of 12 hours' pay at their respective rates of pay for the above two days. This claim will be considered continuous.

EMPLOYEES' STATEMENT OF FACTS: At West Burlington, Iowa, the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier, maintains an office building, maintenance shops and related buildings for the repair service of its equipment.

Sheet Metal Workers O. O. Diderikson, D. L. Vollmer and E. E. Smith, hereinafter referred to as the claimants, are regularly employed by the carrier at West Burlington, Iowa, as Sheet Metal Workers to perform Sheet Metal Workers' work.

On March 17th and 18, 1966, carrier improperly assigned three (3) Store Department employes, to assemble two (2) 20 gauge sheet metal material racks in the traction motor section of the Mechanical Department, building No. 7. These employes assembled these sheet metal material racks by drilling holes where necessary and bolting the 20 gauge sheet metal ends, T iron and 20 gauge sheet metal shelves together. These sheet metal material rack ends are 7 feet high, 36 inches wide, being made to any length by bolting the sections together. These material rack ends are made of 20 gauge sheet

5. Awards 2555 and 3862 of the Second Division denied similar cases and stand as precedents which should be followed in this docket.

This claim must be denied.

All data herein and herewith submitted have been previously submitted to the Organization.

(Exhibits not reproduced.)

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.

Petitioner contends that Carrier violated Rules 27 and 62 of the effective Agreement between the parties when three Store Department employes were assigned to assemble two (2) sheet metal material racks near the Traction Motor Department in Carrier's Building No. 7 at the West Burlington Shops, West Burlington, Iowa on March 17 and 18, 1966. The disputed work required the use of an electric drill machine with drill bits borrowed from the Mechanical Department Tool crib as well as ordinary tools generally required for such assembly work. Petitioner seeks compensation at the punitive rate for named claimants who are sheet metal workers allegedly denied the disputed work.

Carrier avers that Stores Department employes have assembled their own shelving and racks for materials since at least 1953, when a specific allocation of such work was made to the Labor Organization representing Stores Department employes. Furthermore, the Company contends that the skills of a mechanic are not required to assemble such storage racks and that at no time prior or subsequent to the present case has the Petitioner claimed that the disputed work belonged to the sheet metal craft.

Petitioner initially contends that the subsequent assignment of similar work to other than sheet metal workers by the Company in October, 1966 is covered by the instant claim because the final sentence thereof provides as follows:

“ * * * This claim will be considered continuous.”

The record clearly reflects that this claim arose out of an isolated assignment of work on two specific dates rather than a continuing process or work assignment violative of the Agreement. Hence, the claim cannot be construed as a continuing claim and only the events which occurred on the specific dates of claim are subject to adjudication by this Board.

The gravamen of Petitioner's case is that the specific work in dispute is covered by the scope of the effective Agreement between the parties and can-

not be removed therefrom and assigned to others not subject to the terms of said Agreement despite contrary past practice, which was allegedly unknown to Petitioner. Carrier contends that such work is covered by the Agreement of January 1, 1961 between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes and the Carrier as well as a supplemental arrangement since 1953. Hence, the fundamental issue before us is whether the disputed work comes within the scope of the Sheet Metal Workers' Agreement or the Clerks' Agreement.

The record reveals that the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes were duly notified of the pendency of the instant dispute and the effective Agreement between the Carrier and the Brotherhood was submitted in evidence and referred to by the parties in their respective Submissions to the Division. In accordance with the requirements set forth in a recent decision of the Supreme Court of the United States in such jurisdictional controversies, we have examined the contracts between the Carrier and Unions representing different crafts, taking into consideration pertinent evidence as to usage, practice and custom. **Transportation-Communication Employees Union v. Union Pacific Railroad Company. 38US157 (Dec. 5, 1966).**

The pertinent language from the scope rule of the Clerks' Agreement provides as follows:

"RULE 1.

SCOPE - EMPLOYES AFFECTED

(a) These rules shall govern the hours of service and working conditions of the following classes of employes who occupy positions coming within and under the craft or class of clerical, office, station, and storehouse employes subject to the exceptions noted below.

* * * * *

GROUP 3.

(b) Stores Department: Packing Room Attendants, Supplymen, Repairmen, Delivery men and Leadmen; Crane, Derrick, Tractor, Lift Truck Electromobile Operators and Operators of other machines as distinguished from those referred to in Group 1 and 2; Crane Directors, Oil House Men, Counter Men, Inside and Outside Laborers."

Rule 62 of the Sheet Metal Workers' Agreement is entitled "Classification of Work" and provides as follows:

"RULE 62.

CLASSIFICATION OF WORK

Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings and on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of

10 gauge and lighter, including brazing, soldering, tinning, leading, and babbiting, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steampipes; the operation of babbit fires; oxyacetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work."

Analysis of these Rules discloses that the scope rule in the Clerks' Agreement is general in nature and merely lists classes of employes subject to the provisions of the Agreement, whereas Rule 62 of the Sheet Metal Workers' Agreement explicitly describes the work to be performed by covered employes such as the assembling of parts made of sheet metal.

Carrier relies on earlier Awards involving the adjustment of shelves by clerical employes and the installation of prefabricated and completely manufactured shelving by clerks without tools or mechanical skills to support its position that the disputed work in this case did not constitute the type of assembling customarily performed by sheet metal workers. (Awards 2555 and 3862.) However, the record here reflects that the store employes who performed the disputed work were required to use tools as well as an electric drill machine with $\frac{3}{8}$ inch and $\frac{1}{4}$ inch drill bits, which were borrowed from the Mechanical Department tool crib. Moreover, the actual assembling was of 10 and 20 gauge sheet metal materials. Consequently, the factual situation is distinguishable from these earlier awards relied on by Carrier and in fact is comparable to the installation of metal clothes lockers, the subject matter of another Award of this Division which supports the position of the Petitioner (Award 2357).

Regardless of previous practice, the language contained in Rule 62 of the effective Agreement between Petitioners and Carrier is clear and unequivocal, and the implication that fabrication as well as assembly is a condition precedent to application of said rule is without merit. Therefore, we must find that the disputed work is specifically covered by Rule 62, and that Carrier violated the effective Agreement between the parties. As the grievants were denied an opportunity to perform work to which they were contractually entitled, they should be compensated, but at their regular straight time rates instead of the punitive rate sought by Petitioner. (Award 2357.)

AWARD

Claim is sustained as modified by the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1968.

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