

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

O R D E R

To accompany

- (Award No. 5763
- (
- (Docket No. 5587

*Exhibit
THREE*

Mr. W. L. More, Vice President, Personnel

The Atchison, Topeka & Santa Fe Railway Company (Eastern Lines)

80 East Jackson Boulevard

Chicago, Illinois 60604

The Atchison, Topeka & Santa Fe Railway Company is hereby ordered to make effective Award No. 5763, made by the Second Division of the National Railroad Adjustment Board (copy of which is attached and made a part hereof) as therein set forth; and if the award includes a requirement for the payment of money, to pay to the employe (or employes) the sum to which he is (or they are) entitled under the award on or before the 20th day of October, 1969.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

Charles C. McRae

Executive Secretary

Dated at Chicago, Illinois, this 10th day of September, 1969.

Mr. C. J. Chamberlain, Grand President
Brotherhood of Railroad Signalmen
2247 W. Lawrence Avenue
Chicago, Illinois 60625

The claim relates to the installation of thirteen (13) propane gas automatically controlled switch heaters on the interlocking plant at Argentine, Kansas. The work commenced on October 20, 1965 and was completed on December 31, 1965. As to each of those switch heaters Carrier assigned the installation of the burner, the metal covering same and the pipe line running from supply tank to the burner together with whatever fittings and connections were necessary to Signalmen. We will award that: (1) the number of hours worked by Signalmen in the performance of that work be determined from Carrier's records; (2) the total number of hours, so determined, be divided by the number of Claimants (9); and (3) the quotient number of hours times the pro rata rate of pay of each particular Claimant be paid to him, by Carrier, in satisfaction of damages.

AWARD

Claim sustained to the extent set forth in Findings, supra.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

Charles C. Mc Carthy
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September, 1969.

Signalmen would have the right to the work of installing and maintaining the switches to which the heating device is physically attached. It would have, for example, the right to the work of installing and maintaining rail to which a hot box detector system is attached. That such would be contrary to history, tradition and custom in the industry is common knowledge. The argument would have the tail wagging the dog.

Both Carrier and Signalmen, in their Submissions, argue that in our Award No. 4788 we found that the work here involved belonged to Signalmen. We did not. The claim therein was denied because:

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. (Emphasis supplied.)

That the work herein involved was performed in a yard was not disputed by Carrier in the handling of the claim on the property. It is barred from raising such an issue before the Board. See, Opinion in Third Division Award No. 14162 on Remand from the United States District Court for the Northern District of Illinois, Eastern Division, December 19, 1968.

The Scope Rule of the Signalmen's Agreement, effective October 1, 1953, *supra*, was in effect in 1965 when this dispute arose. The Signalmen's agreement was revised effective May 1, 1966. The revised Scope Rule includes ". . . switch heaters connected to or through signal systems . . ." Carrier says this "was done in recognition of Award No. 4788." Signalmen, in its Submission, quotes the revised Scope Rule in support of its claim to the work. The revised Rule is inapposite.

We find that: (1) the work claimed by Sheet Metal Workers - - installation of the burner, the metal covering same and the pipe lines running from supply tank to the burner together with whatever fittings and connection are necessary in the application - - is contractually reserved to Sheet Metal Workers whether the switch heater be manually or automatically activated; and (2) this work is not generally recognized as Signalmen's work; and, therefore, does not come within the ambit of that Organization's Scope Rule, effective October 1, 1953, which was in effect when the work herein involved was performed. We will sustain paragraph 1 of the claim.

Paragraph 2 of the claim prays for monetary compensation for Claimants. Carrier says Claimants were fully employed and even though this Board finds a violation of the Sheetmetal Workers' Agreement they were not damaged. Carrier has made no showing that the work could not have been performed by them. The damages are the loss of the work and the compensation which Claimants would have received for performance of the work absent violation of the Sheetmetal Workers' Agreement.

a signal system and, therefore, the installation and maintainance of the switch heater was reserved to Signalmen by the following Rule of Signalmen's agreement:

"SCOPE

"This Agreement governs the rates of pay, hours of service and working conditions of employes in the Signal Department, including foremen, who construct, install, maintain and/or repair signals, interlocking plants, wayside automatic train control equipment, centralized traffic control, automatic highway crossing protective devices, including all their appurtenances and appliances, or perform any other work generally recognized as signal work. (Emphasis supplied.)

The classification as enumerated in Article I include all the employes of the Signal Department performing the work referred to under the heading of 'Scope'."

In our Award No. 5740 we held:

"It is a principle of contract construction that when a provision of an agreement sets forth specific subject matters concluding with a generalization such as 'any other system or method used for communication purposes' the generalization pertains only to subject matter of like nature and kind as the specifics . . ."

The switch heater device is not of a nature or kind of the specific subject matters listed in Signalmen's Scope Rule, supra.

We agree with Carrier's oft repeated statement in its Submission that it is well established by the case law of this Board that the classification of work should be determined by the reason for doing it and its primary purpose should apply.

The primary purpose of a switch heater is thermodynamical -- heat directed to a switch to free it from ice and snow. It is not a signal device and is not recognized as such. It is not converted to such because it is activated by electricity drawn from Signalmen's power line switched on and off by a Towerman - - the Towerman's function in this respect cannot be held to differ from that of a Section Laborer who ignites the gas of a manual switch heater with a torch.

Sheet Metal Workers have not and do not now claim a right to the work of igniting the gas no matter how accomplished. Its claim is confined to the work which it performed in the installation and maintenance of switch heaters. It disclaims any right to electrical work of any kind.

The issue narrows as to whether Signalmen, because they are authorized to install the automatic ignition system, have a right to installation and maintenance of the same.

The Carrier and Signalmen argue that when Signalmen inserted the electrical devices in the switch heater the switch heater was absorbed into the signal system. If this line of argument were to be found sound then

Carrier, in its Submission, moves for dismissal of the claim on grounds that Petitioner had failed to comply with contractually prescribed time limits within which to perfect an appeal to an intermediate officer of Carrier designated to handle on appeal. In the disallowance of the claim by Carrier's highest officer he did not give failure to comply with time limitation as a reason for disallowance. This constituted abandonment of time limitation as a reason for disallowance. Carrier's motion is DENIED.

Petitioner, on the property, citing Rule 33, moved for allowance of the claim as presented averring failure of an intermediate officer to disallow the appeal submitted to him within 60 days. The officer responded that he had forwarded a written disallowance to Petitioner within the 60 days. Petitioner denied receipt. Thereupon, the officer produced a copy of a disallowance by him bearing date within the 60 days. The time limitation, prescribed in the Rule, tolls from the date of Petitioner's "receipt" of a disallowance; not from the date shown on it. In view of Petitioner's denial of "receipt" of a disallowance the burden of proving "receipt" within 60 days vested in Carrier. It failed to satisfy the burden. We, however, construe Petitioner's Submission as a waiver of the procedural variance and a request for consideration and disposition of the case on the merits.

The ultimate issue is what organization has the contractual right to the work involved in installing automatic switch heaters: Sheetmetal Workers assigned to Carrier's Water Service Department, herein called Sheetmetal Workers; or, Signalmen?

Pre-switch heaters, switches were cleared of ice and snow manually by the Section Laborers and the application of heat from ignited waste soaked in oil. There followed the installation of switch heaters which generated heat from ignition of natural or propane gas piped to the heater, the gas being ignited by a Section Laborer using a torch - - these the Carrier refers to as manual operated switch heaters. They were installed by Sheetmetal Workers. The next development was what Carrier calls automatic switch heater - - "The heating units, as well as the gas control solenoid valve in the gas line, are turned on and off from electrically controlled automatic temperature and moisture detecting devices . . . The electricity to operate these devices is taken from the Signal Department power line, running through cables between the separate devices . . . These heaters are installed within the limits of electro-pneumatic interlocking plant and controlled by Kansas City Terminal towermen . . . In the event a power switch freezes up and the towerman attempts to throw it by means of a lever, the switch will not move, the towerman receives an indication to that effect on his control panel . . ."

The piping of gas from propane storage tanks, contractor owned, to tanks adjacent to each switch, the metal housing of the heater unit, the metal heat reflector radiating direct from the heaters, the heater unit mounted on the stock rail . . . fabrication, installation and maintenance of these automatic switch heaters Carrier recognized as part of the work covered by Rule 83 of that crafts agreement. By . . . ignition was installed in the device. . . Department power line activated by a . . . received a light indicator signal, the switch heater itself became part of

(Advance copy. The usual printed copies will be sent later.)

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 5763
Docket No. 5587
2-AT&SF-SM '69

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

Parties to Dispute: (System Federation No. 97, Railway Employees'
(Department, AFL - CIO
((Sheet Metal Workers)
(
(The Atchison, Topeka and Santa Fe Railway Company
((Eastern Lines)

Dispute: Claim of Employees:

1. That under the current collective Agreement it was improper for the Carrier to assign other than Sheet Metal 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 tanks to automatic type switch heaters on Carrier's Eastern Division.
2. That accordingly, the carrier be ordered to additionally compensate

Sheet Metal Workers:

R. G. Stubler	R. F. Freeman	H. J. Phillips (Helper)
L. M. Milliron	J. G. Kushan	E. E. Grimes
W. W. Clark	C. A. Jones	J. L. Sullivan

at their respective rates, the amount of hours the Carrier's own records indicate the following hereinafter referred to work was performed by others than members of the Sheet Metal Workers 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 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.

On motion of Carrier, granted, made in its Submission, Brotherhood of Railroad Signalmen, herein called Signalmen, was served with Third Party Notice dated February 13, 1968, to which it responded and intervened in these proceedings by filing a Submission dated March 14, 1968, which Submission has been given full consideration as mandated in Transportation-Communication Workers, et al. v Union Pacific R. R. Co., 385U.S.157(1966).