



Award No. 5832

Docket No. 5660

2-WP-SM- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 117, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Sheet Metal Workers)**

THE WESTERN PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement the Carrier improperly assigned other than Sheet Metal Workers to make repairs and install wash basins and pipes on January 17-19 and 20, 1967 in the men's wash rooms at Roundhouse at Oroville, California.
2. That accordingly, the Carrier be ordered to:
 - (a) Discontinue the use of employees other than employees of the Sheet Metal Workers' craft in performing the work of repairing and installing wash basins and pipes in men's washrooms.
 - (b) That accordingly, the Carrier be ordered to compensate Sheet Metal Worker Herbert Lightle for sixty-two (62) hours at the regular rate of pay.

EMPLOYEES' STATEMENT OF FACTS: On January 17th, 19th and 20th, two water service employees did remove and replace pipe pertaining to moving wash basins to another place in the washroom. Being inside building in the shops, is in violation of sheet metal workers' classification of work rule No. 90.

The carrier, in addition to the employment of craftsmen outside the scope of the above mentioned agreement, likewise regularly employed on said Western Pacific property hourly rated sheet metal workers for the purpose of performing sheet metal workers' work in shops, yards and buildings, as per Rule 90 of the agreement, hereinafter referred to. The carrier's officers, however, in this instant case declined to use sheet metal workers to perform the aforementioned work even though the sheet metal workers performed the exact work on many other occasions in many other company buildings and in this instance the sheet metal workers did apply originally the wash basins and pipes that were moved.

The agreement, effective February 1, 1946, as subsequently amended, is controlling.

In April 1966 a question arose in connection with the repair of gas pipes in carrier's Sacramento Shops. To comply with a Sacramento City Ordinance the work involved was performed by a licensed plumber in the Water Service Department.

Prior to the performance of the work, the matter was discussed with General Chairman B. C. Crowley, Sheet Metal Workers' International Association. Mr. Crowley recognized the fact that the work had to be performed by a licensed plumber and concurred in the performance of the work by a Water Service Department employee licensed as a plumber.

The factual situation involved in the performance of the work in 1966 is identical to that presently in the instant dispute.

There was no sheet metal workers licensed to perform the pipe work in Sacramento in 1966, nor was claimant in the instant dispute licensed to perform pipe work.

It is obvious the performance of pipe work by a licensed plumber in 1966 did not violate the agreement between carrier and sheet metal workers' international association, and it is inconsistent for Mr. Crowley to now contend that under an identical factual situation carrier has violated the agreement between the parties.

In conclusion carrier asserts claimant was prohibited by law from performing the work involved in the instant dispute and, therefore, the claim presented herein is totally without merit and should be denied.

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 employees 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.

The Organization alleges that Carrier violated the basic Agreement, more particularly Rule 90 thereof, by permitting employees other than employees of the Sheet Metal Workers' Craft to perform the work of repairing and installing wash basins and pipes in men's washrooms. Rule 90 reads in pertinent parts as follows:

"Rule 90. Classification of Work:

"Sheet Metal Workers' work shall consist of tinning, copper-smithing and pipefitting in shops, yards, buildings,; the building, erecting, assembling, installing, dismantling and maintaining parts 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 babbitting, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steampipes;, and all other work general recognized as Sheet Metal Workers' work."

They further contend that it is an indisputable fact that Sheet Metal Workers are assigned to perform this class of work, at the hourly basis, and

that such assignments are authorized and made in accordance with Scope of Agreement, reading:

"This Agreement shall apply to those who perform the classes of work specified by the different classifications of the Agreement in all departments."

The Organization further bolsters its position by citing the qualifications provisions of Rule 89, reading:

"Any man who has served an apprenticeship, or who has had four (4) or more years of experience at the various branches of the trade, who is qualified and capable of doing Sheet Metal Work or pipe work as applied to buildings, machinery, locomotives, cars, et cetera, whether it be tin, sheet iron, or sheet copper, and capable of bending, fitting and brazing of pipe shall constitute a Sheet Metal Worker."

The Organization states categorically that the Sheet Metal Workers' craft was always called upon and did perform this class of work, not only in this building but all other buildings on the Company property.

The principal contention of the Carrier in its submissions was that a local Ordinance prescribed that a licensed plumber was required to do the work involved. The Organization argued against this and indeed Carrier finally agreed in its rebuttal that the Organization was correct on this point. State Law took precedence over the local Ordinance and this in effect provided that the work accomplished must satisfy certain plumbing Code requirements. It was not necessary to have a licensed plumber, which is the apparent reason why carrier permitted two water service employees to do the work involved.

The two water service employees came within the purview of the Maintenance of Way Agreement, and since proper notice was given to that Union, the third party notice has been satisfied.

After reviewing the Classification of Works Rule and the evidence available to us in this record, we are persuaded that the work involved in the instant claim has been performed by the Sheet Metal Workers over an extended period of time. The actions therefore of the contracting parties over the years thus give life to the written document, demonstrably showing that the Organization was correct in its position. The work was Sheet Metal Workers' work. Claimant accordingly should be made whole and by that we mean he should receive the difference in pay he actually received on the dates in question and that which he would have received had he performed the work in question.

A W A R D

Claim 1. sustained.

Claim 2. (a) sustained.
(b) sustained consonant with opinion as expressed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1969.

Central Publishing Co., Indianapolis, Ind. 46206

Printed in U.S.A.