



Award Number 5951

Docket Number 5764

2-N&W-SM- '70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Sheet Metal Workers)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, other than employes of the Sheet Metal Workers Craft, (B&B Carpenters) were improperly assigned to perform pipe work, removing old Sewer line, installation of new Sewer line and necessary fittings for Showers, Basins and toilet facilities, Blacksmith Shop wash and locker room, Roanoke Shop, Roanoke, Virginia, on July 6, 7, and 10, 1967.
2. That accordingly the Carrier be ordered to additionally compensate the following employes of the Sheet Metal Worker's craft in the amount of ninety-six (96) hours at the time and one-half rate, to be equally divided among them.

Claimants: Mr. C. R. Shifflett
Mr. D. H. Hendricks
Mr. E. H. Goad
Mr. A. L. Dillon
Mr. G. A. Updike
Mr. M. D. Doss

EMPLOYEES' STATEMENT OF FACT: At Roanoke, Virginia, the Norfolk and Western Railway Company, hereinafter referred to as the carrier, maintains a shop known as Roanoke Shop, Sheet Metal Workers' are employed by the carrier in its Roanoke Shop to perform their work as specified in the current Agreement. The carrier has maintained numerous wash rooms and toilet facilities at Roanoke Shop since the building of the shop. Maintenance renewals and repairs to these facilities having been performed by the sheet metal workers' repair gang, Roanoke Shops. On July 6, 7, and 10, 1967, the carrier in a modernization of the shop program, assigned employes of the Maintenance of Way Craft to install these Sewer Lines, and over protest by the Local committee.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including Carriers' highest designated officer, all of whom have declined to make satisfactory adjustment.

Fourth Division, Award 1632:

"There is nothing in this case which distinguishes it from the majority of awards from the several Divisions of this Board which hold that in order to qualify for punitive pay the work must have been actually performed in excess of eight hours. In the instant case, the claimant has not qualified himself for the punitive rate by doing the work which makes the higher rate applicable."

In conclusion, the carrier respectfully submits that the facts and evidence presented in carrier's submission and hereinafter shown as a summary clearly shows the claim is not supported and should be denied.

CARRIER'S SUMMARY:

1. Sheet Metal Workers do not have the exclusive rights to the work claimed and no evidence was offered that Rule 84 does grant exclusive rights to sheet metal workers to perform all work contained therein in every situation.

2. MofW forces have been assigned to such projects in the many shops, offices and warehouses of this carrier continuously from the year prior to the craft agreement to the present claim.

3. Many prior Awards of the Second Division have held:

(a) The shop craft scope rule separates the work of each shop craft and does not give any craft the exclusive rights to all such work. See Third Division Award 615 and Second Division Awards 3871, 4875 and 5019.

(b) Past practice anti-dating the agreement supports carrier's right to assign work. See Second Division Awards 3277, 3300 and 4130.

(c) Management has certain rights and prerogatives to manage its affairs when not restricted by the agreement. See Second Division Award 3862.

(d) The claimants all held regular assignments and suffered no loss. See Special Board 570 Awards (No. 3 dissent) and 5, 6, 8, 36, 37, 53, 61, 97, 104 and 105.

4. Payment of the overtime rate is not justified.

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.

The questions to be determined in this dispute is whether the installation of sewer lines is work exclusively reserved to this Organization under the Agreement between the parties.

Rule 84, relied on by the Organization, is vague and unclear. There is no classification under the rule which covers the work complained of.

The record does disclose, however, that in the past this kind of work had been performed by Maintenance of Way employes. There is no necessity to cite authority for the long standing tenet of this Board that absent a clear and unambiguous rule, past practice governs.

The record indicates that third party notice of the pendency of this dispute was given.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June, 1970.