Award No. 6145
Docket No. 6007
2-N&W-SM-'71

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. 16, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Sheet Metal Workers)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement the Carrier improperly assigned other than Sheet Metal Workers (Electricians) to:

(A) Install and connect the water supply and drain lines to a Ice Machine.

(B) That accordingly, the Carrier be ordered to additionally compensate Sheet Metal Workers C. E. Wimmer and R. J. Witt, in the amount of seven (7) hours each at the time and one half rate for the above violation.

EMPLOYES' STATEMENT OF FACTS: At Bluefield, West Virginia, the Norfolk and Western Railway Company, hereinafter referred to as the carrier, maintains a shop known as Bluefield Shop, in this shop are employed sheet metal workers, to perform their work as specified in the current agreement.

Work in shops, yards and buildings, in Bluefield and outlying shops is performed by the herein aggrieved employes along with repairs to locomotives.

On December 4, 1968, carrier assigned electricians to transport a ice machine from Bluefield Shop to Carbo Shop and install the same by connecting the water supply line and drain line.

The sheet metal workers named above, hereinafter referred to as the claimants, are regularly employed and assigned as sheet metal workers at Bluefield Shop.

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

Third Division, Award 13177:

"The principle behind the time and one-half rate is that overtime work is to be shunned. The rate is called 'punitive.' Its purpose is to discourage Carrier from working an employe beyond hours. But here the claimant has not worked beyond hours. Carrier should not, therefore, be punished by being required to pay the punitive rate."

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 statement of facts, Submission and hereinafter shown as a summary, clearly shows the claim is not supported and should be declined.

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. Electricians have been doing this work since the installation of ice machines and similar equipment on the carrier's property.

3. Even if rule 84 did give sheet metal workers exclusive rights to the work, electricians could perform this work under rule 31 of the current agreement.

4. Prior board awards have declined to entertain claims that were identical and similar to the one in this instant dispute.

5. 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, 5019.

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

(c) The claimants all held regular assignments and suffered no loss. See Special Board 570 Awards (No. 3 dissent) and 5, 6, 8, 36, 37, 44, 53, 61, 97, 104 and 105. See also many Second Division Awards.

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.

This is a third party case involving both the Sheet Metal Workers and Electricians. The Electrical Union was properly notified of the pendency of the issue before us.

From the evidence of record, Electricians traveled a distance of some seventy-five (75) miles from Bluefield to Carbo. While there, they renewed a socket in a yard light, renewed a control cable on the electric hoist on the Shop Track and reinstalled the ice-making machine, which consisted of making electrical connections and tightening one pipe union in the cold water line. It is this latter piece of work which is the subject of this dispute, the Organization claiming that it violates Rule 84, the Classification of Work Rule of the collective bargaining Agreement. This Rule in pertinent parts reads:

> "Sheet Metal Workers' work shall consist of * * * the bending, fitting, cutting, threading * * * brazing, connecting and disconnecting of air, water, gas, oil and steam pipes, * * * and all other work generally recognized as sheet metal workers' work."

The Organization also relies on the following portion of Rule 31 —

> "None but mechanics, apprentices and hourly rated gang leaders shall do mechanics' work as per special rule of each craft."

Petitioner contends that the work performed was within the scope of Rule 84, that it was the work of a pipefitter, and that in general the work of disconnecting and connecting of the water and drain lines is contractually the work of sheet metal workers.

Carrier contends that Sheet Metal Workers do not have an exclusive right to the work and cite many examples of other crafts doing similar type work, for example; Machinists disconnect and connect oil, water, fuel, etc. lines while repairing Diesel locomotives, automobile and air compressors; Carmen disconnect and connect air lines on train lines; Hostlers and brakemen disconnect and connect air lines and hoses; Maintenace of Way employes do the same work on other equipment.

Carrier submits that Rule 31 of the Agreement permits the subject work to be done by other than sheet metal workers. They rely on the following language contained therein:

> "If a mechanic of a craft is working on an assignment and running repairs the completion of which requires the removing and replacing of parts covered by the Classification Rules of another craft, he may be required to remove and replace these parts."

They also rely on a National Agreement dated September 25, 1964, Article IV of which reads:

"At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will so far as they are capable of doing so, perform the work of any craft not having a mechanic employed at that point."

As we view the rules invoked by both sides and the evidence of record before us, it becomes apparent that craft lines are crossed in many instances as cited within by Machinists, Carmen, etc. In order for this board to render a sustaining award, Petitioner would have to present a preponderant body of evidence showing that sheet metal workers have an exclusive right to the work. This record does not so indicate. Carrier, under the rules cited in their behalf are clearly permitted to do precisely that which was done in this case. Petitioner has not sustained his burden of proof. We will deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April, 1971.

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