

Award No. 6226
Docket No. 6032
2-SCL-SMW-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier improperly assigned Blacksmith and helper during the period December 23 through December 27, 1968 to lay out and cut with shape cutting machine 16 gauge sheet metal to be used to fabricate window awnings for installation on diesel locomotives.

2. That accordingly the Carrier be ordered to compensate Sheet Metal Workers S. H. Turner and D. A. Cason sixteen (16) hours and forty-five minutes each at time and one-half rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Workers S. H. Turner and D. A. Cason, hereafter referred to as the claimants, are regularly employed by the Seaboard Coast Line Railroad, hereafter referred to as the Carrier, in the carrier's shops, Waycross, Georgia, and were available to be called on their rest days and after bulletin hours.

On December 23, 1968, Blacksmith D. J. Barnes and Helper O. J. Kirkland, who operate the shape cutting machine, were assigned to take over from the claimants, the work of laying out and cutting of metal awnings from sheet metal of 16 gauge thickness. Throughout the years sheet metal has never been cut on shape cutting machine.

The agreement effective January 1, 1968, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that Rule 85 of the current agreement provides the following:

"Sheet metal workers' work shall consist of tinning, coppersmithing and and pipe-fitting in shops, yards, buildings, on passenger coaches and engines of all kinds, the building, erecting, assembling, installing, dismantling (not scrapping) and maintaining parts made

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 claim arose as a result of Carrier permitting a shape cutting machine operator to do the work of laying out and cutting of metal awnings rather than having sheet metal workers perform said work.

The Organization is relying on Rule 85 of the Agreement, and is contending that said rule in conjunction with Rule 26(a) gives sheet metal workers the exclusive right to the work in question; that Carrier has contracted with its sheet metal workers that none but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft; that metal has never been cut on the shape cutting machine for use by the craft; that the Blacksmith Craft do not claim the burning or cutting of sheet metal 16 gauge or lighter on the shape cutting machine.

Carrier's position is that it has been the practice on this property, and as required by Rule 28, that portable cutting machines are operated by the various crafts in connection with their work, but that large pantograph type machines are operated by shape cutting machine operators and helpers who cut steel sheets and steel plates for all crafts; that on March 16, 1934 Superintendent of Motive Power, James Grant, advised J. M. Garner, President Shopmen's Ass'n., that a special cutting machine was being installed and that the operator of the machine would have to have knowledge of all around mechanical work, such as blacksmith work, welding work, machine work, sheet metal work, etc.; that Supt. Grant advised Master Mechanic C. A. White, by letter dated March 16, 1934, that Carrier did not intend assigning this work to any craft inasmuch as the work is so comprehensive that it takes an all-round mechanic with just a little knowledge of every line of work to master the machine; that said machine operators were given separate seniority, and Blacksmith's Craft was given sole bidding rights to fill any vacancies, however said operators were classified as shape cutting machine operators and helpers and not Blacksmiths; that no agreement was entered into to restrict the type, size or thickness of metals to be cut on this machine; that Rule 85 does not cover sheet steel in any manner or size, but covers only black, planished, pickled and galvanized iron of 10 gauge and lighter, which are easily worked by the normal tools of sheet metal workers; that for many years shape cutting machine operators have cut sheet steel into its proper configuration afterwards formed into various objects by sheet metal workers; that the Letter of Understanding of December 20, 1967 is not applicable to this dispute since no work has been transferred from the sheet metal craft to shape cutting machine operators due to the fact that the cutting of all sizes and thicknesses of metal with the shape cutting machine has been in effect since March, 1934; that shape cutting machine operators are not covered by any classification of Work Rule and the very nature of the title of their position covers shape cutting of all materials; that claimants suffered no loss of pay and were on duty at the time the shape cutting machine operator cut the steel for the awnings and were therefore not available.

Rule 85 of the Agreement provides as follows:

"RULE 85. CLASSIFICATIONS

Sheet metal workers' work shall consist of tinning, coppersmithing and pipe-fitting in shops, yards, buildings, on passenger coaches and engines of all kinds, the building, erecting, assembling, installing, dismantling (not scrapping) 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 babbitting (except car and engine truck journal bearings where handled by foundry forces; the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil, and steam pipes; the operation of babbit fires and pipe threading machines; oxy-acetylene, thermit and electric welding on work generally recognized as sheet metal workers' work as provided in Rule 27, and all other work generally recognized as sheet metal workers' work."

"RULE 26.

ASSIGNMENT OF WORK

(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."
Rule 28 of the Agreement states:

"RULE 28.

Shape cutting machine operators and helpers as shown on the seniority roster of the former Atlantic Coast Line Railroad prior to January 1, 1953, will have and hold seniority rights over all Blacksmiths and Helpers on shape cutting machine. Vacancies and new positions will be filled from the Blacksmiths' craft under provisions of Rule 15(c), (d) and (j).

Reduction in forces of mechanics or helpers working as shape cutting machine operators or helpers will be made in accordance with the seniority rosters of Blacksmiths and Helpers. However, shape cutting machine operators and helpers who established seniority prior to January 1, 1953, will not be affected by this change.

Portable cutting machines will be operated by mechanics of the respective crafts in connection with each craft's work."

A close study of the Scope Rule of the Agreement, Rule 85, reveals that the "cutting" of the metal in question is not covered specifically by said Scope Rule. Said Scope Rule does specifically include the "cutting" of air, water, gas, oil, and steam pipes, but it does not embrace the "cutting" of galvanized iron of 10-gauge and lighter. If this Board were to conclude that the Scope Rule covered the "cutting" of the metal in question, we would be adding to the agreement, which this Board is not authorized to do. Thus, we must conclude that the work in question is not expressly included in the Scope Rule of the Agreement.

While it is true that Carrier initially gave the work in dispute to Sheet Metal Workers, this isolated single incident, does not ripen it into a past practice that would give the work in question to Claimants. Further, Carrier disputed the Organization's assertion that it has always been a practice for Sheet Metal Workers to cut sheet metal of 10-gauge and lighter used in their work. Carrier, in contra to said allegation of the Organization, asserts that a number of items consisting of pipe flanges, bracket parts, and enclosure sheets all cut from sheet metal stock, were flame cut to pattern on the shape cutting machines and further processed or used by Sheet Metal Workers. The Organization submitted notarized statements from three Sheet Metal Workers stating that no one had ever cut any sheet metal with shape cutting machines for use of fabrication of any items made of sheet metal. Carrier offered the statement of Car Department Foreman, C. B. Blount, Jr. that with regard to cutting material with shape cutting machines in the Fabricating Shop, shape cutting machines have been used to shape cut steel plate, steel sheet, steel structural shapes, steel billets and various steel castings without restriction as to size or thickness for all crafts over the entire system on an as needed basis.

Thus, we have conflicting evidence as to what the past practice has been in regard to the cutting of the metal in question. We, therefore, cannot resolve the issue as to whether or not it has been the past practice of sheet metal workers to cut the metal in dispute, and thus having failed to meet its burden of proving by probative evidence said past practice, the contention of the Organization in this regard must be denied.

For the aforesaid reasons, we are compelled to 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 3rd day of December, 1971.

LABOR MEMBERS' DISSENT TO AWARD NO. 6226, DOCKET NO. 6032

The majority in its denial of Award 6226, Docket 6032, completely ignored the sworn to statements of the three sheet metal workers who, under voluntary oath, stated the true facts of their claim.

This is an insult to the character and integrity of these three claimants. However, the majority does rely on a statement of Car Foreman C. B. Blount, Jr., who is not a sheet metal worker and did not make his statement under oath. Mr. Blount, Jr., is not of the Sheet Metal Workers' Craft and therefore not trained or qualified in the skills of the craft. The majority relies on the statement of Mr. Blount, Jr., not sworn to, compared to the three statements, under oath, of the claimants.

The majority states that cutting of metal under question is not covered in Rule 85. This, of course, is due to the fact that not being of the craft they have absolutely no knowledge of the skills of the craft in fabricating items of sheet metal. Contrary to their interpretation of the rule, we should like to know how a sheet metal worker could build, erect, assemble and install sheet metal without cutting the sheet metal. Any type of sheet metal work such as window awnings, funnels, elbows, duct work, oil cans, caboose ice boxes, card holders, etc., all must be cut to build, erect, assemble and install. Accordingly, I wonder why the carrier has hand and power shears (cutting tools) in their sheet metal shops. When sheet metal workers build, erect, assemble and install sheet metal work they must do one of the following operations; cut, solder, rivet, spot weld or acetylene weld and braze.

The majority further relies on a statement of Foreman Blount, Jr., in their decision by quoting his statement that the shape cutting machine is used for shape cutting of steel plate, steel sheet, steel structural shapes, steel billets and various steel castings. None of these items can be compared to the instant claim as same was for sheet metal work.

Webster's Unabridged Dictionary defines sheet metal as metal in the form of sheet: Similarly, sheet iron, sheet steel, sheet tin, etc.

Steel billets and steel castings are not in the category of sheet metal. Sheet metal is formed on rolling machines, castings and billets are poured metal in forms and molds.

The majority, in conclusion, states that we failed to meet the burden of proving past practice. This is only because the employes' submission was ignored as presented and the true facts not ruled upon. As stated in the submission, the sheet metal workers did start the fabrication of this project and then the work was taken away from them and assigned to the blacksmiths.

For the above stated reasons, the majority was in error when they denied this claim and we dissent to Award 6226.

E. J. Haesaert
Labor Member

D. S. Anderson
Labor Member

E. J. McDermott
Labor Member

R. E. Stenzinger
Labor Member

O. L. Wertz
Labor Member