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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6426
Docket No. 6217
2-AT&SF-SM-'73

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 97, Railway Employes' Department, A. F. of L. - C. I. O. (Sheet Metal Workers)
(The Atchison, Topeka and Santa Fe Railway Company - Western Lines -

Dispute: Claim of Employes:

1. That the Atchison, Topeka & Santa Fe Railway Company violated the controlling agreement when it improperly assigned other than Sheet Metal Workers to install Switch Heaters.

2. (a) That accordingly the Carrier be ordered to additionally compensate Sheet Metal Workers E. E. Reed, D. L. Lee, L. B. McKinley, and G. Knopfel for eight hundred (800) hours at their established rates, for such violation;

(b) Payment of 6% interest per annum on above amount, compounded annually on the anniversary date of claim.

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 signalmen. Notice was duly given to the Brotherhood of Railroad Signalmen. That Organization responded by objecting to this Division's jurisdiction over matters pertaining to their work but made no submission and did not otherwise intervene. The Signalmen were involved in two prior claims to this Division by the Sheetmetal Workers for the same work. In the first, decided in Second Division Award No. 4788, Signalmen received notice but did not intervene. In the second, decided in Second Division Award No. 5763, the Signalmen did intervene after receiving notice. This case involves the same parties and the same subject matter. Accordingly this Division has jurisdiction.

Sheetmetal Workers claim the right to work performed by Signalmen in the installation of gas lines connected to switch heaters. They claim this right by virtue of Scope Rule No. 83 of the General Agreement, Memorandum of Agreement dated September 15, 1948, Section 2, which is referred to in the record as January 1, 1950, ans past practice.

Carrier defends its position by stating that they assigned the work to signalmen in accordance with past practice and the findings in Awards No. 4788 and No. 5763.

In Award No. 4788, decided November 1965, the Organization's argument was based upon its contractual right to the work under the Scope Rule, the Memorandum of 1950 and, as a past practice, that it did the work when Rail-Tel switch heaters were installed at Argentine, Kansas. Carrier denied the past practice. It referred to the work on other seniority districts as experimental and performed by combining the use of several classes or crafts of employes. Therefore, in the early stages of the development of the switch heaters, no one class or craft obtained exclusive right to the work. Carrier claimed that after the pilot stage, when switch heaters were installed on this Division starting in 1963, it assigned the work to the signalmen because the heaters were used in connection with switch operations and proper signal functioning. The findings in this case did not discuss the merits of the parties' positions. The Awa rd was based on a finding that Rule 83 was not modified or expanded by the Memorandum of 1948 and that the work in dispute was not performed in the areas specified in Rule 83, because the work claimed was performed outside the yards.

In Award No. 5763, decided in September 1969, the parties made the same arguments. This time, however, the work claimed was performed inside the yards. The findings in this case did discuss the merits of the arguments. In doing so, it was found that Sheetmetal Workers had a contractual right to install the pipe lines. It was also found that the switch heaters were not absorbed into the signal system when they became automatic, fired by electrical ignition supplied by power from the Signal Department power line activated by a Towerman; even though a malfunction was communicated to the Towerman through the signal system. The finding was also made that the specific references in the Signal Department Scope Rule did not include switch heaters and that this device was not within the general inclusion of, "appurtenances and appliances", or generally recognized signal work. No finding was made nor was there any discussion concerning the right to this work if it was to be performed outside the yards.

In the present case, the work was performed outside the yards. Carrier changed over from the pad type to the direct flame type switch heater. Installations were made by signalmen at five different points on the New Mexico Division during 1966 and 1967. Carrier claims it assigned the work to signalmen following Award No. 4788, and that no complaint was made by Sheetmetal Workers. That Organization says that it did not know that the work had been performed outside the yards.

During October and November 1970, Carrier installed the new type switch heaters at eight more locations and again assigned signalmen to the work outside the yards for the same reason. This work brought on the present claim.

In Award No. 5763, the Board stated in its findings that: "The ultimate issue is what organization has the contractual right to the work involved in installing

utomatic switch heaters: Sheetmetal Workers assigned to Carrier's Water Service Department,--; or Signalmen? The Award was in favor of Sheetmetal Workers.

In Award No. 4788, it was found that Rule 83 provided only for work, "in shops, yards, buildings and on passenger coaches and engines of all kinds", and that the Memorandum of 1948, "--does not modify or expand the provisions of Rule 83."

The Organization has argued in this case that through an oversight it did not emphasize in the submission in Award No. 4788 the point that it now makes. In no uncertain terms, strenuously and vehemently, the labor member insists that we must understand that the water service forces have Division seniority. If the work contractually belongs to them as decided in Award No. 5763 then it applies outside the yards according to the Memorandum of 1948 and that the decision in Award No. 4788 was a mistake. It is argued that if we find that water service forces do not have a contractual right to the work outside the yards despite the specific language of the 1948 Memorandum to wit, "Water Service Forces shall install --- all --- gas --- lines for other than Mechanical Department facilities and equipment.", then Division seniority is being ignored and these workers could refuse to do the work outside the yards if requested to do so by the Carrier.

We have carefully read the positions of the parties in both prior Awards referred to. The arguments made there do not need to be repeated here. The letter of O. M. Ramsey, Assistant to Vice President, dated September 25, 1963 and the contentions following it (Award No. 4788) make out a strong case in favor of the Carrier ut the findings refer only to the agreements of the parties, including the 1950 Memorandum. The findings in Award No. 5763 disagree with the Carrier's same contentions but offer no help to the Organization's arguments as to work performed outside the yards.

The 1948 Memorandum does not specifically amend Rule 83 to include installations by water service forces other than in Mechanical Department facilities. It simply extends this work to water service forces over other Sheetmetal Workers. The contractual right to do the work within the yards is, therefore, not necessarily extended to the same work outside the yards under the scope rule. This does not, however, preclude the possibility that water service forces may be called upon to perform outside the yards the work contractually reserved for them within the yards.

The issue in this case is whether or not the Carrier properly assigned the contested work to the signalmen.

Following Award No. 4788 in 1965, the Carrier properly assigned the work to signalmen in 1966 and 1967. Following Award No. 5763 in 1969, the Carrier did not improperly assign the work outside the yards to signalmen in 1970.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January, 1973.

LABOR MEMBERS' DISSENT TO AWARD NO. 6426
DOCKET NO. 6217

The majority were in error when they denied the claim in Docket No. 6217, Award No. 6426. The majority in their denial completely ignored the record before them as submitted by the Employes for the following reasons:

The majority have relied on the Findings in Award No. 4788, and that Rule 83 was not modified or expanded by the Memorandum dated September 15, 1948. The Memorandum gave to the Water Service Forces the installation, renewing and maintaining all water, oil, gas, steam and air lines for other than mechanical department facilities and equipment. It concedes to the Sheet Metal Workers all of this work, and since the Claimants involved here have division seniority, then certainly this claim should have been sustained.

Webster's unabridged dictionary defines the word "all" as --

> "a) a combining form meaning the whole of; the whole part of; and further in part--exclusively and all together."

The Memorandum is specific in stating - "All water, oil, gas, steam and air lines for other than Mechanical Department facilities and equipment; and, irrespective of facilities served, will handle plumbing, building heating, server lines and lines for delivery of water to facilities where required." (Emphasis added) Yet, the majority ignored this Memorandum in their denial of this claim. Further, the Employes in their Exhibits B,C,D, and E, which are notarized statements that historically they have been performing all of the pipe work listed in this Memorandum over the entire division--this again was completely ignored by the majority.

The Carrier has never denied in the negotiations on the property and in their submission that these employes, the Claimants, did not have division seniority.

In the third paragraph from the bottom, page 2 of this Award, the majority states-"This does not, however, preclude the possibility that Water Service Forces may be called upon to perform outside the yards, the work contractually reserved for them within the yards."

Since this claim has been denied by the majority, under which rule would the Claimants now be required to perform work outside of the yards? If the assignments will be made under their Classification of Work Rule No. 83, then this claim should have been sustained. If they are to be assigned under the Memorandum dated September 15, 1948, then this claim should have been sustained. If they are to be assigned under the work jurisdiction of their division seniority, then again this claim should have been sustained.

They further rely on Award No. 5763 and concede that in this Award it was found that the Sheet Metal Workers did have the contractual right to install the pipe lines involved. They further concede that the work in question was not absorbed into the signal system when the automatic switch heaters became automatic. They further concede that the scope rule of the Signal Department did not include the installation of switch heaters.

This work is contractually reserved to Sheet Metal Workers in Award No. 5763, and since the Claimants have division seniority, then again the claim should have been sustained.

In the Employes' Submission in this claim, we conceded that in Award No. 4788, and Award No. 5763, the issue of division seniority was not made a part in either of these submissions. We did, however, in Docket No.6217, and I quote - "In no uncertain terms we strenuously and vehemently did inject the question of division seniority." Yet, again, the matter of division seniority was again ignored.

This Division does not have the authority to destroy the working assignments under the Division seniority system which the Claimants have historically been governed and worked by.

For the above outlined reasons, as explained, this claim should have been sustained.

D. S. Anderson

E. J. Haesaert

W. O. Hearn

E. J. McDermott

R. E. Stenzinger