

(Advance copy. The usual printed copies will be sent later.)

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6493
Docket No. 6301
2-MP-SMW-'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. 2, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Sheet Metal Workers)
 {
 { Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly, Rules 26(a), 96 and 97 when on September 17, 1970 and continuing through September 29, 1970, the Carrier improperly assigned employees of the Store Department at North Little Rock, Arkansas the duties of installing and assembling 144 metal drawers.
2. That the Missouri Pacific Railroad Company be ordered to compensate Sheet Metal Workers L. V. Gadberry and H. B. Caldwell eight (8) hours each at the pro rata rate of pay between September 17, 1970 and September 29, 1970 for said violation.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Carrier maintains a shop at North Little Rock, Arkansas for repair of locomotive and other equipment. In addition to the mechanical shops, there is a Material Department Distribution Center totally occupied by Stores Department personnel, in a separate building. This personnel is represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees. The work in dispute was performed by Materials Department employees. The work consisted of removing steel bins from upright shelving and installing in their place prefabricated adjustable sheet metal drawers. Guide supports for the drawers were bolted onto the shelving uprights in pre-drilled holes with bolts supplied by the manufacturer. The tools used were wrenches supplied to fit the bolts and pliers, and possibly screw drivers. The Third Party union was duly notified but did not intervene.

Sheet Metal Workers claim the work by reason of Qualifications Rule 96, and Classification of Work Rule 97 which states in part: "; the building, erecting, assembling, installing, dismantling (for repairs only), and maintaining parts made of sheet --- metal --- of 10 guage and lighter ---." Second Division Awards No's. 1359, 2357, 2372, 5618, 5950, 6063, 6117, are submitted in support of sheet metal worker's right to work within their Classification of Work Rules.

Carrier contends that the material bins or drawers are not affixed to the building, are adjusted as needed by store room personnel who have always done this work and that since the original installation by contractors many years earlier, it has been a function of the Materials Department under the jurisdiction of the Purchasing and Materials Department. The claim was also rejected because the work was not shop work for Mechanical Department according to the statement in the Agreement as follows: "It is understood that this Agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment Department and in the Reclamation Plant at Palestine, Texas." The carrier submitted prior Second Division Awards No's. 4368, 6226 and 5 BA No. 570, Award No. 187 with reference to Classification of Work Rule. In support of their major contention, carrier submitted Second Division Awards No's 2695, 3171, 3172 and 6253.

The Awards submitted by the Organization uphold the right to perform sheet metal work specified in Classification rules so long as the work includes the tools and skills of the craft. This was applied to the assembling of material racks on which holes were drilled with tools and parts from the Mechanical Department. That work was done within a shop building under the jurisdiction of the Maintenance of Equipment Department, Award 5618. In another case Sheet Metal Workers were Awarded the work under their classification rule but under circumstances which do not involve the facts of this case, Award 2372. One case referring to assembly and installation of lockers favored sheet metal workers over another craft also because of classification rule, where the lockers were installed within Mechanical Department Smith Shop for Mechanical Department Forces, Award 5950. Awards 2357 and 6063 also found in favor of sheet metal workers over another craft in the assembling of lockers to be used by Mechanical Department Forces in their locker rooms in Mechanical Department Buildings. These Awards do not include the facts of the present case.

More to the point in favor of the Organization is Award No. 6117 wherein electrical workers were awarded work under their classification rule over signalmen for work performed in the signal shop. In that case the Agreement included the understanding that the rules applied only to those performing work in the Maintenance of Equipment Department. However, that case was followed by a recent Award No. 6253 which involved assembling and installing of prefabricated lockers in the Store Department by clerks (as in the present case). The same carrier was a party as in Award No. 6117 and the same Agreement was applicable. As in the present case, sheet metal workers were the claimants. In the recent decision, on facts directly parallel with the present case, it was found that: "The work --- was a relatively simple procedure. The classification of work rule states ---, but such work must be performed in the Reclamation Plant and Maintenance of Equipment Department."

We need not argue over the meaning of classification of work rule. The issue in this case is whether or not it applies to the present situation. Second Division Award No. 3682 stated in the Findings, with reference to erecting, assembling and installing shelving in the storehouse department claimed by sheet metal workers, the following: "--- the shelving and frames were not fabricated or constructed on the property but were purchased prefabricated --- and came knock-down, to be assembled without tools or mechanical skills. They were set up in the storeroom by the storekeeper and his assistant to replace wooden shelving formerly used. This was not building, erecting, assembling, installing or fabricating, such as would customarily be done by sheet metal workers, and the claim should be denied."

Awards No's 3171 and 3172 are cited in Award No. 6253, discussed above, and are referred to here because the carrier in those two cases is the same as in this case. The Agreement is the same including the understanding that it shall apply to those who perform the work specified in the Agreement in the Maintenance of Equipment Department. The claims of shop craft unions in both cases were denied because the work was not performed in the Maintenance of Equipment Department and the Agreement did not apply.

The effect to be given to restrictive language of the agreement was again demonstrated, in Award No. 2695. Sheet metal workers claimed the right to install metal lockers pre-fabricated and prepared for easy assembly in the yard offices. The Agreement was restricted to employees who perform work outlined in the Agreement in the Maintenance of Equipment Department among other departments specified. The claim was denied because the disputed work was not performed in a department specified in the agreement.

Petitioner has the burden to prove its case. The weight of the decisions favor the carrier under the facts of this case. The classification of work rule of the sheet metal workers is not in dispute. First to be considered is whether or not the Agreement applies to this situation. Evidently the agreement of the parties to restrict the work specified in the Agreement to the Maintenance of Equipment Department is controlling. This is not a bar to work of the craft being assigned outside the shop but it restricts the right to demand the work. The affidavits of sheet metal workers that their work has been performed for the Materials Department is not inconsistent with this finding.

A W A R D

Claim Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killian

Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1973.