

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

Parties to Dispute: (Sheet Metal Workers' International Association
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(Louisville & Nashville Railroad Company

Dispute: Claim of Employees:

1. That the Carrier violated the current agreement, particularly Rule 87, at Louisville, Kentucky, when they improperly assigned B. & B. Maintenance of Way Employees of installing twenty (20) gauge aluminum corrugated metal to South Louisville Shop building from February 25, 1971 through March 5, 1971.
2. That accordingly the Carrier be ordered to additionally compensate Sheet Metal Workers T. R. Jackson, E. Berry, George Owen, P. E. Abner, W. W. Hunter, G. E. Scolfres, J. A. Hougland, E. R. Callaway, M. A. Cholf and R. T. Stewart one hundred and sixty two (162) hours, sixteen (16) hours each at the pro rata rate of pay.

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 Organization contends that Carrier violated the Agreement between the parties when it assigned Maintenance of Way (B&B) employes to apply corrugated metal siding to a building at Carrier's South Louisville Shops.

In support of its assertion, the Organization cites Rule 86 and Rule 87 of the Agreement. The pertinent portions are quoted herewith:

Rule 86

"Any man ... who is qualified and capable of doing sheet metal work ... as applied to buildings, ... whether it be tin, sheet iron ... shall constitute a sheet metal man."

Rule 87

"Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings, including general office buildings, and on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter, ... and all other work generally recognized as sheet metal workers' work."

Carrier's position may be summarized as follows:

1. The work involved was properly performed by the Maintenance of Way employes under Rule 41 of their Agreement.
2. It has been the practice of Carrier to assign such work to Maintenance of Way employes for almost 30 years.
3. There was an express agreement between all the parties dated February 14, 1944 (known as Memorandum of Understanding No. 3) in which the Sheetmetal Workers granted the Maintenance of Way employes the right to construct and maintain buildings.
4. That the Organization has not met its burden of overcoming the assertions and allegations of the Maintenance of Way employes.*/

The Organization strongly relies on Awards 1359 and 2372 of this Division that held that the language contained in identical classification rules gave the Sheetmetal Workers the right to work similar to that involved in this dispute, despite years of contrary practice. It is unnecessary to pass on the correctness of those awards, as they might apply to this dispute, since by agreement between the Sheetmetal Workers and the Brotherhood of Maintenance of Way Employes expressly agreed that on this property the B&B employes had the right to construct and maintain buildings. The Agreement (Memorandum of Understanding No. 3) provides in part:

"At all other points, except as enumerated above, the work will be performed by the Maintenance of Way Employes, and in addition the ---

Construction and maintenance of buildings, ..."

*/ Proper third party notice was given in accordance with T.C.E.U. v. Union Pacific 385 U.S. 157 (1966); and the Maintenance of Way employes filed a submission that is part of the record herein, contending that the work involved exclusively belonged to them.

Under the particular circumstances surrounding this dispute, the Board is compelled to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch L.H.
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of September, 1973.