

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: (Sheet Metal Workers International Association
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Carrier improperly assigned storehouse laborers and an office clerk to assemble and install metal shelves of approximately 18 gauge metal.
2. That the Carrier be ordered to compensate Sheet Metal Workers Guy Ambrose and Floyd Gadson eight (8) hours each, Wednesday, July 22, 1970. W. A. Sanders and Floyd Gadson eight (8) hours each, Thursday July 23, 1970 and eight (8) hours each, Friday July 24, 1970. Dick Ambrose eight (8) hours July 27, 1970, this being at time and one-half rate.

Findings:

The Second Division of the Adjustment Board, upon the whole record and 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.

In connection with a rearrangement of facilities at Savannah, Georgia, Carrier found it necessary to rearrange existing shelving and install new shelving on four days in July of 1970. Carrier utilized storehouse employees covered by the Clerks agreement to perform said work. The Sheet Metal Workers filed a claim alleging said work to be theirs under Rule 85 of the agreement between claimant organization and the Carrier.

Rule 85-"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 babbiting (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 babbitt 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 worker's work."

The claim was progressed on the property and appealed to this Board. The Brotherhood of Railway Airline and Steamship Clerks was served notice and it filed a submission herein.

The Carrier has raised two procedural questions that must be resolved prior to a discussion of the merits.

First, Carrier alleges that the handling had not been completed on the property in that certain statements of Sheet Metal Workers were submitted to Carrier only eight (8) days prior to the filing with this Board. The action of the organization does not constitute a jurisdictional defect in that the statements were merely by way of confirmation of what had been alleged by the organization during the handling on the property.

Carrier further alleges as a jurisdictional defect the failure of the Organization to follow the procedure for resolving jurisdictional disputes that is set out in the December 20, 1967 agreement between the Carrier and certain Labor Organizations including the Sheet Metal Workers but not the Clerks which letter of agreement reads as follows:

"In consolidating the shop craft agreements of the former Atlantic Coast Line and the Seaboard Air Line Railroads to effect a new working agreement for the merged Company, it is recognized that in some instances the application of certain rules and the assignment of certain work has been applied differently on the two railroads; work assignments will in some cases overlap into another craft within the shop crafts; and certain rules pertaining to shop crafts will conflict with work being performed by other organizations.

When the consolidated agreement becomes effective, it is therefore agreed that where conflicts exist regarding specific items of work in the classification of work rules of the new agreement, no changes in the practices of performing such work that were in effect prior to the merger will be made by the Company until such conflicts or jurisdictional disputes are settled.

Where there is a conflict in specific items of work between the shop crafts and other organizations, it is agreed that no changes will be made by the Company in the practices of performing such work that were in effect prior to the merger until such conflicts are settled.

"The organizations will present to management their proposals for settlement of such conflicts or disputes, and the management will accept any reasonable proposal. Rates of pay will not be a deciding factor in management's acceptance or rejection of proposed settlements.

If necessary or requested by either party, conference will be arranged with all interested crafts within thirty (30) days after request is made in order to resolve conflicts or jurisdictional disputes.

This letter of understanding in no way restricts the rights of management or the organizations contained in the merger protection agreement of November 3, 1966, and is not intended to prevent the Company from transferring work from one location to another as contemplated in the Agreement of November 3, 1966, subject to the provisions of that Agreement.

Please indicate your acceptance of this understanding in the space provided below."

This letter was executed by the Sheet Metal Workers and the Carrier.

Nowhere in the record is there anything which suggests that a claim of right to the work by the Clerks as opposed to the Sheet Metal Workers was set forth. The issue was rather that the work did not belong to the Sheet Metal Workers as a matter of right due to their agreement. The Letter Agreement is inapplicable as the issue was formed on the property.

We must decide whether the work claimed belonged to the Sheet Metal Workers under Rule 85.

The Carrier has submitted two awards as precedent in which cases the claims on behalf of Sheet Metal Workers were denied.

Award 2555 (Ferguson) narrowly defined the issue as to whether after the original installation the Sheet Metal Workers were entitled to the exclusive right to adjust the shelves thereafter. This Board held they did not.

Award 3862 (Johnson) dealt with a similar rule and held as follows:

"The record shows that the shelving and frames were not fabricated or constructed on the property but were purchased prefabricated and completely manufactured, 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."

In the instant matter the shelving was assembled with the use of tools and for that reason the case is distinguishable from Award 3862. Further, in that we are concerned with more than "adjusting" 2555 is inapplicable.

Rule 85 clearly refers to "erecting and assembling", "in buildings" and "10 gauge and lighter". We are unable to come to any conclusion in the face of such clear wording other than that the work properly belongs to the Sheet Metal Workers by virtue of their agreement. The past practice cited by the Carrier cannot be determining in the face of clear and unambiguous language. The submission and rebuttal of the Brotherhood of Railway Airline and Steamship Clerks fails to in any way substantiate their claim to the work.

We will sustain the claims for the hours claimed but at the pro rata rate.

A W A R D

Claim sustained in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November, 1973.

DISSENT OF CARRIER MEMBERS
TO
AWARD NO. 6594, DOCKET 6296
(REFEREE FRANDEN)

Award 6594 is in serious error and we dissent.

The letter Agreement of December 20, 1967 concerning jurisdictional disputes provides specifically:

"Where there is a conflict in specific items of work between the shop crafts and other organizations, it is agreed that no changes will be made by the Company in the practices of performing such work that were in effect prior to the merger until such conflicts are settled."

The work involved was performed by clerical employees in the same manner that such work had been performed by years. In the handling on the property the Carrier advised the General Chairman:

"It is apparent you are seeking work that has been performed by employees represented by the Brotherhood of Railway, Airline and Steamship Clerks. Therefore, this is a jurisdictional dispute and should be handled accordingly. It is also suggested you review the Letter of Understanding dated December 20, 1967, which concerns the proper procedure to settle disputed items of work."

and that it would be a violation of the December 20, 1967 Letter of Understanding to change the work practice.

In its submission to this Board the representatives of the Clerks' organization stated:

"For more than 50 years the assembling, dismantling, relocating of metal shelving in storerooms has been performed by employees represented by our organization."

and

"The assembling of metal shelves requires no special skill and has consistently been performed by unskilled laborers employed in and around storerooms throughout the system."

Based on the record, there is absolutely no basis for the conclusion of the Referee that "The Letter Agreement (of December 30, 1967) is inapplicable as the issue was formed (sic) on the property." There is likewise no proper basis for the conclusion that "The submission and rebuttal of the Brotherhood of Railway Airline and Steamship Clerks fail to in any way substantiate their claim to the work."

Award 6594 is not supported by the record, is palpably erroneous, and we are compelled to register our most vigorous dissent thereto.

P. L. Carter

H. M. Braidedwood

W. B. Jones

E. F. Hawley

G. M. Jackson