

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
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(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Carrier improperly assigned other than Sheet Metal Workers to the erecting, assembling and installing of the sheet metal Duct work installed in the General Office Building West First Floor, Roanoke, Virginia.
2. That accordingly the Carrier be ordered to compensate Sheet Metal Workers H. M. Chapman and P. E. Roberts in the amount of 162 hours at the time and one half rate to be equally divided among them.

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.

In 1972 Carrier undertook a remodeling project of the first floor of its General Office Building at Roanoke, Virginia. The remodeling has been described as including the following: "(1) the construction of several dividing walls, (2) installation of paneling and doors, (3) new air condition and heating duct system including fan coil units and duct heaters, (4) lighting fixtures, (5) drop ceiling, (6) floor tile and carpet, (7) toilet and hand washing facilities, (8) thermostats, etc.". The work in question was performed by employees of Carrier and by outside contractors' forces as follows: Maintenance of Way forces performed building structure work and installation of heating and cooling duct work; Sheet Metal Workers performed the above ground connections and piping for fan-coil units, toilet and wash basins and drain lines from fan-coil units; Electricians did the

wiring; and the outside contractors performed thermostat work, furnished lighting and fixtures, laid carpeting and prefabricated the duct work.

On October 6, 1972, Petitioner filed a claim on behalf of Sheet Metal Workers H. M. Chapman and P. E. Roberts alleging a violation of classification of work rule 84 by the assignment to other than Sheet Metal Workers the fabrication, erecting, assembling and installing of the sheet metal duct work installed in the General Office Building remodeling project. Carrier declined this claim on December 1, 1972 stating as follows:

"There has been no violation of Rule 84 or any other rule of the current agreement in this instance. The work which you cite does not belong exclusively to sheet metal workers by rule or practice nor is it work of a type currently performed by sheet metal workers. For many years duct work has been contracted out or performed by the Maintenance of Way Department or other crafts."

The positions of the parties have remained initially unchanged throughout handling on the property, the dispute has not been resolved and comes to us now for disposition. Since the Brotherhood of Maintenance of Way Employes has an interest in this matter that Organization was permitted to file with our Board a submission of its position with regard thereto.

Sheet Metal Workers, Petitioner herein, asserts that the clear and unambiguous language of Rule 84 vests in it the exclusive right to the installation of heat and air conditioning duct work in dispute. Petitioner readily concedes that over the years such work has frequently been contracted to outside forces but denies that Maintenance of Way Employes frequently have performed same. Further, Petitioner argues that irrespective of practice the work belongs to it alone under the express provisions of Rule 84.

Carrier maintains that the assignment of installing the prefabricated heating and air conditioning ducts to Maintenance of Way forces is consistent with a long-standing past practice which predates Rule 84 and which has been followed since the establishment of Rule 84. Moreover, Carrier asserts without contradiction from petitioner that such work has been for many years performed by outside contractors in Carrier's buildings. Finally, Carrier maintains that the language of Rule 84 itself is not so clear and unambiguous as to vest the duct work exclusively to the Sheet Metal Workers. Accordingly, Carrier contends that neither express language nor custom, practice and tradition support such exclusive claim to the work in dispute.

The Brotherhood of Maintenance of Way Employees states that work of the type in dispute has traditionally and historically been performed by BMW forces without objection by any other Organization since 1921. Accordingly, that Organization asserts that a practice of over 53 years duration should not be summarily changed or terminated.

We have carefully considered the evidence adduced, the pertinent contract provisions and the positions of each of the parties. In all of the circumstances herein we conclude and find as follows:

1. The work in dispute did not involve the fabrication of duct work by BMW forces. The ducts were purchased prefabricated, and bolted in place or installed by Maintenance of Way Employees.
2. The language of Rule 84 is not so clear and unambiguous as to confer of itself alone exclusive jurisdiction of the installation of air conditioning ducts upon Petitioner.
3. The record supports the conclusion that such work has been performed over the years both by outside forces and by BMW forces. Accordingly, exclusive jurisdiction of the disputed work is not vested in petitioner by custom practice and tradition.
4. Consistent with the foregoing, the work did not exclusively belong to Claimants and the Carrier's action in the instant case did not violate Rule 84.

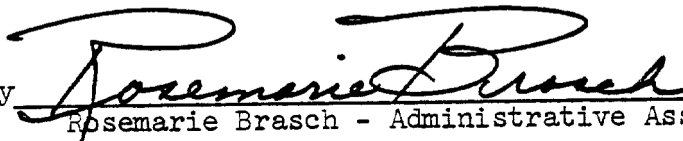
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of September, 1974.

