

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( Sheet Metal Workers' International  
( Association  
(  
( Burlington Northern, Inc.

Dispute: Claim of Employees:

1. That the Burlington Northern Inc. at Vancouver, Washington, violated the controlling agreement on Oct. 5, 1972 through Oct. 26, 1972 when that Carrier assigned other than sheet metal workers to perform the piping on the Impco tank for the sanding facility at the Vancouver shops in Washington.
2. That accordingly, the Burlington Northern Inc. be ordered to compensate the following sheet metal workers, Glenn Nunnenkamp, G. A. Schubothe, P. E. Phillips, L. P. Caudle, W. R. Scott and K. G. Harrington in the amount of forty-eight (48) hours of pay at the overtime rate to be equally divided among the claimants.

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 were given due notice of hearing thereon.

The Claimants are Sheet Metal Workers at Vancouver, Washington. The basis of the Petitioner's complaint is that the Carrier violated Rule 71 of the current Agreement when it assigned Maintenance of Way employes the duties of installing an Impco tank for the purpose of supplying sand to the two sand towers at Vancouver, Washington. The Petitioner contends that the pipe work involved in the installation should have been performed by employes of the SMWIA craft. Both the Carrier and the Brotherhood of Maintenance of Way Employes disagree.

Rule 71 states:

"Rule 71. CLASSIFICATION OF WORK

Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, 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, including brazing, soldering, tinning, leading, and babbitting, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil, sand and steampipes; the operation of babbit fires; oxyacetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work."

Rule 98(c) states:

"(c) It is the intent of this Agreement to preserve pre-existing rights accruing to employees covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S Railroads prior to the date of merger; and shall not operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging Carriers which were in effect prior to the date of merger."

It is the purpose of Rule 98(c) to preserve preexisting rights accruing to the employees covered by the Agreement as they existed in effect on the S P & S Ry. Co. prior to the date of merger. The SMWIA employees' rights are thus both preserved and limited to those that existed on the former SP&S Ry. Co., and System Fed. No. 7. The Scope Rule of that Agreement stated:

"It is understood that this agreement shall apply to those who perform the work specified in this Agreement in the Mechanical Department of these Companies."

Rule No. 86, the Classification of Work Rule, states in pertinent part:

"(d) Sheet Metal Workers--first class: Qualified and regularly assigned to do all general work in connection with sheet metal ten gauge and lighter, pipe and plumbing work, including steam, gas and water systems on passenger and other cars. Manufacturing miscellaneous tinware and copperware. Jacket repairmen qualified to lay out, cut, finish, repair and apply locomotive jackets. Manufacturing and applying clamps and other work requiring similar . . . . . \$2.35 per hour.

(e) Tinners--reclamation: Reclaiming tinware, lanterns and lamps of all kinds; cleaning and repairing air and hand sanders, sand pipes and clamps; babbittmen operating babbitt fires in connection with sheet metal workers' work . . . . . \$2.26 per hour."

(Emphasis Supplied)

There are two ways for the SMWIA to successfully substantiate the instant claim: (a) by demonstrating that clear, definite and unambiguous language in a rule of the parties, unencumbered by other rules of the same agreement, grants the work in question to the SMWIA, or (b), demonstrate that the work in question has historically and exclusively been performed by the SMWIA employees system-wide.

The Petitioner argues that Rule 71 contains clear, definite and unambiguous language granting the work to the SMWIA employees, and based on Awards 2357, 2372, and 6056, they contend that we should sustain the claim. If no other rule of the Agreement restricted the application of Rule 71, we would agree with the Petitioner and sustain the claim. However, the application of Rule 71 in the instant case is restricted by Rule 98(c) of the Agreement. As discussed previously, because of Rule 98(c) we must return to the former Agreement of the SP&S Ry. Co. to ascertain whether or not a rule existed in that Agreement that granted the work in question to SMWIA employees with the requisite clear, definite and unambiguous language. Rule 86(d) is general in nature, referring only to "pipe and plumbing work". It does not contain the necessary specificity to constitute the clear, definite and unambiguous language required to confer of itself alone the exclusive jurisdiction of installation of the piping work for an Impco Tank upon the Petitioner. Rule 86(d), quoted above, is in no way similar to the clear, definite and unambiguous language of Rule 109 in Awards 2357 and 2372 and Rule 302 in Award 6056, the Awards upon which the Petitioner relies. Nor does

Rule 86(e), quoted above, which deals with "Tinner-reclamation;" and the "cleaning and repairing of air and hand sanders, sand pipes and clamps," apply in any way to the instant case which deals with the installation of piping work for an Impco tank.

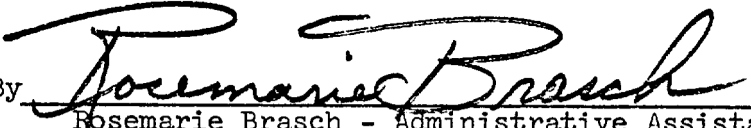
Since the petitioning Organization has not demonstrated to this Board that the work in question is reserved to the Organization exclusively by clear, definite and unambiguous language of a rule, unencumbered by other rules of the agreement, then in order for us to sustain the instant claim the Organization must demonstrate that piping work on sanding facilities has historically and exclusively been performed by the SMWIA craft system-wide. By system-wide we mean that the burden of proof is on the Organization to show exclusivity of practice system-wide on the former SP&S Ry. Co. We conclude that the Petitioner has clearly not met its burden of proof concerning a system-wide practice of installing the pipe work on sanding facilities on the former SP&S Ry. Co. Therefore we must 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 - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of May, 1975.

*Noted*  
LABOR MEMBER'S DISSENT TO AWARD NO. 6867 ADOPTED MAY 30, 1975

The majority are in error and the referee is narrow in his interpretation of existing rules. The Sheet Metal Workers did not ask for an interpretation of an existing rule, they asked only for work to be returned to them that they proved they had performed prior to the merger.

The referee places too narrow of an opinion on his assertion that the Sheet Metal Workers International Association can successfully substantiate the claim based only in two ways:  
G. M. YQUHN (A) Pipe and plumber's work is clear, definite and unambiguous language and (B) The Sheet Metal Workers International Association did demonstrate that the work in question has historically and exclusively been performed by them at this location.

The claim did not encompass any other locations except the one in the instant claim. If the claim had been to award the work to the Sheet Metal Workers International Association on a system wide basis, it would have been presented on that basis. It was not, therefore, the majority and the referee are in error. The Claim should have been sustained.

*M. J. Cullen*  
M. J. Cullen  
Labor Member - Second Division

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