

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. The Carrier violated the provisions of the current agreement when they improperly assigned other than Sheet Metal Workers, the assembling of two pipe racks made of 2 inch pipe 21 feet long and 10 feet high, at Dale Street Shops on August 27, and 28, 1973.
2. That accordingly the Carrier be required to compensate Sheet Metal Workers Irvin Marstad and Elmer Osell each in the amount of eight (8) hours pay at the prevailing rate for each of the following days, August 27, and 28, 1973.

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, Sheet Metal Workers I. Marstad and E. Osell are employed at the Carrier's Dale Street Shops located in St. Paul, Minnesota, a location on the former Great Northern Railway Company. On the claim dates Material (Store) Department employees, represented by the BRAC organization, assembled two pipe racks made of two-inch pipe in the Material Department at Dale Street for their own use.

The Organization contends that the work of assembling metal pipe racks belongs exclusively to SMWIA by the clear and unambiguous language of Rule 71 of the Agreement.

The Carrier contends that no such exclusive right exists; and contends that such work has been done by many other crafts on the property; and in particular in the Material Department at Dale Street by clerical employees. The Carrier further contends that the SMWIA employes are attempting to expand their work jurisdiction contrary to Rule 98(c).

The BRAC, Boilermakers and Blacksmiths, and BMWE organizations were given third party notices that this dispute was pending before the Board. The BRAC and BMWE organizations did not file a submission. The Boilermakers filed a submission and withdrew from the dispute at the referee hearing.

We incorporate by reference Award 7083, decided this day, for discussion of the impact of Rule 98(c). Rule 71 of the current Agreement is identical in every material particular to Rule 72 on the former GN Railway with the exception that BN Rule 71 includes the word sand. Since BN Rule 71 is more readily available for reference than GN 72 for those reading this award, and since Rule 71 is the current rule of the Agreement, it is set out as follows, as emphasized by the SMWIA in their Submission pp. 2 and 3:

"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." (Emphasis supplied)

The Organization structures its case on the contention that the clear and unambiguous language of Rule 71 (GN 72) grants the SMWIA the exclusive right to the assembling of metal pipe racks. The Organization does not submit evidence of an exclusive system-wide past practice on the GN: it relies on the clear language of Rule 71. The outcome of this case turns on whether or not the work in question falls within the clear and unambiguous language of the Agreement.

The clear and unambiguous language the SMWIA relies on is:

"Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards building...."

From the entirety of Rule 71 (GN 72) the Rule does not reserve the work with all materials made of pipe to SMWIA employes (as does this very rule reserve the assembling of materials of 10 gauge and lighter--used for metal shelves--in the companion case decided this day). Nor does the rule set out in clear and unambiguous language that all pipe work is reserved to SMWIA employes. Nor does the rule set out that the assembling of racks made of pipe is work exclusively reserved for SMWIA employes.

The rule says "pipefitting". Pipefitting in this industry consists of the segment of the sheet metal workers' craft dealing with the installation and repair of piping systems. Various piping systems would be air, water, gas, oil, sand, steam, certain vent systems, etc. These piping systems exist to convey substances from one point to another. The contention that the assembling of metal pipe racks made of standard pre-cut pipes is clearly and unambiguously "pipefitting" must fail.

Further, for the record and not determining the outcome of this case, the Employes Exhibit F, page 7, the SMWIA contends that:

"The assembling of these pipe racks is pipefitting work which consists of the cutting, fitting, threading and welding of two-inch pipe which is definitely spelled out in Rule 71."

The Organization has the burden of proving its case. Mere assertions will not serve as proof. The pipes in question were pre-cut standard length. The Carrier contends that the pipes were clamped not threaded; and that there was no "fitting" involved. There is no evidence offered by the Organization that cutting of pipes was involved. There is no evidence offered by the Organization that the pipes were welded. The Carrier's evidence is that there was no "threading" and "fitting".

Finally, the Organization contends that in Awards 5618 and 6544 it was held that SMWIA employes had the exclusive contractual right to the assembling of metal shelved racks. We found so as well, in the companion case decided this day. If the SMWIA employes have the exclusive right to assemble metal racks, they argue, they should have the exclusive right to assemble pipe racks. This Board has strictly limited authority. It is not within our authority to allocate work based on our own sense of consistency or equity. We are empowered only to interpret the Agreement of the parties. We have no authority to add to or alter the Agreement in any way. It should be pointed out as well that while the SMWIA employes do not have exclusive right to assemble metal pipe racks, they are not precluded from doing this work; and may be assigned such work at the Carrier's discretion.

A W A R D

Denied.

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 14th day of July, 1976.

DISSENT OF LABOR MEMBERS TO AWARD NO. 7082 - REFEREE TWOMEY

It seems strange to this Organization that the Majority in Award No. 7082 should quote a portion of the meaning of the word "pipefitting" as contained in the AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE - 1973 and ignore the most important meaning given to the word as it relates to this instant dispute. On page 997 of the above dictionary, the definition of the word "pipefitting" is given as "1(a) the act or work of joining pipes together".

The Majority refers to the Sheet Metal Workers' Craft dealing "with the installation and repair of piping systems", as given in the above dictionary 1(b) and does not refer to "pipefitting" as involved in this dispute.

Pipes that are "joined together", may be done in a number of ways including the use of clamps, and the Majority are in grievous error when they attempt to confine the Sheet Metal Workers to the "installation and repair of piping systems".

When the Majority states "Nor does the rule set out in clear and unambiguous language that all pipe work is reserved to the SMWIA employees" they are in very serious error. How can "pipe work" be done without "Pipefitting", as contained in the Rule, taking place?

If the Majority continues to bolster their decisions with

obscure definitions and in applying deviate reasoning to arrive at a decision, they do violence to the spirit and intent of the Board to function as a reasonable and fair minded body.

This dispute should have been resolved in a very different manner and the claim should have been sustained as presented.



M. J. Cullen
M. J. Cullen

Labor Member - Second Division