

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

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

Dispute: Claim of Employes:

1. That the Carrier on or about May 19, 1973, assigned Roadway Mechanics (Maintenance of Way) employees to repair a four (4) inch water main line in shop (car yard), Florence, South Carolina.
2. That the Carrier be ordered to compensate Sheet Metal Workers C. D. Lee and W. E. Adams for four (4) hours each at time and one-half 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 were given due notice of hearing thereon.

When Carrier assigned Roadway Mechanics to repair a four (4) inch water line within the shop yard, the Organization submitted a claim asserting a violation of Rule 85:

"RULE 85 -- CLASSIFICATIONS

Sheet metal workers' work shall consist of tinning, copper-smithing 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 workers' work."

Carrier has denied a violation, and the Brotherhood of Maintenance of Way Employees, by means of Third Party participation, supports Carrier's position.

The employees have suggested that Carrier failed to notify Claimants within the sixty (60) day time limit of the pertinent rule. Carrier insists that the parties had agreed to waive time limits. Our review of the record leads us to conclude that time limits were waived. In addition, Carrier has stated that the employees have failed to follow the proper procedures for disposing of jurisdictional disputes as contained in the December, 1967 Agreement. The Organization denies that said Agreement controls. Our disposition of the dispute herein makes it unnecessary for us to decide the matter.

The Claimants contend that the work in question falls specifically within the phrase "pipefitting within shop areas" as stated in Rule 85 and, according to the Organization, no evidence of past practice may alter the clear language of the Agreement. We do not agree that the contractual language under review is so specific as to render meaningless a showing of prior job performance.

Carrier asserts that the duties in question have historically belonged to Maintenance of Way employees, and have been performed by other than Maintenance of Way forces, only in cases of emergency. Moreover, it points to Rule 5, Section 2 of the Maintenance of Way Agreement:

"Water Service, Fuel & Air Conditioning Subdepartment

Group A: Pump Repair Gangs, including their electrical workers, Well Gangs, Water Service Repairmen, Pump Inspector-Repairmen, Air Conditioning Repairmen, and employees maintaining fueling facilities constructed and maintained by the Maintenance of Way and Structures Department."

Not only do the parties rely upon diverse Awards of this Division (6056 and 2483), they have submitted "factual" statements which purport to support their respective contentions concerning past practice. While certain suggestions have been offered which contend that a close scrutiny of the statements indicate that they can be read in harmony - we disagree. We feel that the statements are apposing, and reach different conclusions.

Moreover, although the claim refers to "repair" work, we note, both in the record, and at the Referee Hearing, the Organization made references to "installation." Those concepts are not synonymous.

While, in the final analysis, a disposition of a case under the burden of proof concepts may not be ideally dispositive of a dispute; nonetheless, under this record, we are compelled to follow that concept. The Organization has submitted the claim and thereby has assumed a burden of proof. We are unable to find that the evidence of past practice preponderates to the benefit of either party and, accordingly, we must dismiss the claim for failure of proof.

A W A R D

Claim dismissed.

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 8th day of October, 1976.

