

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: ( Sheet Metal Workers' International  
( Association  
(  
( Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement, particularly Rule 97 at North Little Rock, Arkansas on August 26, 1975 when they improperly assigned Carmen the duties of disconnecting piping, removing and applying wash basin, and connecting piping to wash basin made of 18 gauge stainless steel on Caboose Number 13414.
2. That accordingly the Missouri Pacific Railroad Company be ordered to compensate Sheet Metal Worker E. C. Bevins four (4) hours at the pro rata rate of pay for such violation.

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 this case, Caboose 13414 was on the spot repair track at North Little Rock, Ark. A stainless steel wash basin in the cab needed repair. Carmen assigned to the spot track disconnected the piping to the wash basin and unbolted the basin from the wall. The basin was then sent to the sheet metal shop at the Pike Avenue facility for repairs by sheet metal workers. After the repairs were completed, the basin was returned to the spot repair track, some two miles from the Pike Avenue facility, and reapplied to the caboose by carmen assigned to the spot repair track.

Petitioner claims the right to the piping disconnecting and reconnecting involved; Carrier and Carmen (interested third party) maintain such work by Carmen is of long standing.

Petitioner cited Rule 97, Sheet Metal Workers' Classification of Work, which provides, in part:

"Sheet metal workers...work shall consist of tinning, coppersmithing and pipefitting in shop, on passenger coaches; cabooses and commissary cars (when done in shops) and engines of all kinds;...."

Carrier refers to Rule 26(b), Assignment of Work:

"(b) At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

Petitioner also relies on a 1920 interpretation of the Rules of the National Agreement between the United States Railroad Administration and the Railway Employees' Department of the American Federation of Labor, which reads in part:

"The term 'Shop Yard' as used in this Rule (Rule 126 of the National Agreement) is intended to include the yards in and around the immediate vicinity of the shop."

Petitioner also submitted a letter dated August 23, 1950 from the then General Chairman of the Carmen's Organization to a carman local chairman which states that:

"In regards to your claim for 16 hours account of welding gang installing water pipes in work cars MPX 3579 and MPX 3275, I regret to advise, ----, that the installation of water pipes in cars does not come under the jurisdiction of our organization--it is sheet metal workers' work and if you will refer to Rule 97(a) you will find that this work is covered therein."

This letter, Petitioner alleges, indicates recognition by the Carmen's Organization that the work at issue is Sheet Metal Workers' exclusively and that the Sheet Metal Workers' jurisdiction over such work is not limited to shop work.

Petitioner also contends that the North Little Rock facility constitutes a single "point", with all Sheet Metal Workers under a single seniority roster, and that, therefore, Sheet Metal Workers should have been called to perform the work.

Carrier's position is that Rule 97 refers to caboose work performed in a shop and not to the repair track where only carmen are assigned. It therefore complies with Rule 26(b) in that Carmen did the disconnecting and reconnecting on the caboose at the spot repair track, whereas the Sheet Metal Workers repaired the wash basin in the shop. Carrier insists that spot repair tracks are not, and never have been, considered shops.

Carrier cites several Awards on the property which hold that there can be separate points in the application of Rule 26(b) in a terminal. It adds that at North Little Rock, this Board has held that, in the application of Rule 26(b), facilities adjacent to the hump yard are separate points from facilities in the Locomotive Department. In short, it concludes, two separate facilities can be separate points under Rule 26(b) even though they may be relatively close together.

The 1920 interpretation cited by the Petitioner, according to the Carrier is inapplicable for several reasons, including the fact that the 1920 National Agreement terminated with the end of government control in 1921 and is no longer part of any agreement between the Carrier and either the Sheet Metal Workers of Carmen.

The third party in interest, the Carmen's Organization, filed a statement rebutting Petitioner's claims and pointing out that the Carmen's General Chairman's 1950 letter makes no reference to work on cabooses.

A close examination of Rule 97 (Classification of Work Rule) reveals that it does not specifically set out the work performed in this case. Indeed, the Rule specifically limits sheet metal workers pipe fitting on cabooses to work "when done in shop". In the case before us, the work on the caboose was done on the spot repair track, at some distance from the shop. No probative evidence has been submitted by Petitioner that Sheet Metal Workers have customarily, historically and traditionally performed this work exclusively on a system-wide basis, especially at points removed from the shop, such as, in the case before us, at a spot repair track.

Previous Awards of this Board, including some covering the same parties, have considered the issue as to whether various work locations within a facility collectively constitute a single "point" or are to be considered separate "points" in the application of Rule 26(b). Under circumstances similar to those involved here, including the fact that there was insufficient work at a particular location or "point" to merit the full time employment of members of a particular craft at that location, the Board has ruled that such locations are to be considered separate "points" in the application of Rule 26. Award No. 5613 of this Board has described "point" as a particular place having a definite position or situs. Prior awards of this Division have held that the burden is upon the petitioner to establish through competent evidence that a Carrier's entire operation within a metropolitan area constitutes a separate "point" even though all positions therein are filled from a single seniority roster.

Petitioner has offered no probative evidence concerning prior practice under similar circumstances and the applicable Agreement contains no definition of the term "point".

Concerning the 1950 letter by the Carmen's General Chairman to a Local Chairman, submitted by Petitioner, the record yields no information as to the type of work involved, where it was performed, or any other information which might be helpful in our determination of the instant case.

Based on the foregoing and prior Awards of this Board, there is no basis for the claim and it will be denied.

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 7th day of February, 1979.

LABOR MEMBER'S DISSENT TO

AWARD NO. 7832, DOCKET NO. 7705-T

We feel that the author of this Award has committed greivous error in his findings for the following reasons:

The work involved carmen disconnecting piping, removing and applying wash basin, and connecting piping to the basin made of 18 gauge stainless steel on Caboose No. 13414, at North Little Rock, Arkansas, on August 26, 1975, and this is work spelled out in the Sheet Metal Workers' Rule 97, to wit:

"Sheet Metal Workers----work shall consist of tinning, coppersmithing, and pipefitting in shops, on passenger coaches, cabooses and Commissary cars ----and engines of all kinds;---- The bending, fitting, cutting, threading, brazing connecting and disconnecting of air, water, gas, oil and steam pipes----and all other work generally recognized as Sheet Metal Workers' work."

and a review of the Award will show that the author went far afield in ignoring the provisions of Rule 97 and relying on Rule 26(b) which reads:

"(b) At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

The facilities where this work was performed are within the bounds of the Greater North Little Rock Terminal and is not a separate or outlying point where no Sheet Metal Workers are employed. At the time of the incident Sheet Metal Workers were working in close proximity to the spot rip track on the service track approximately 100 yards from where carmen performed this work.

The author of this Award goes on to say:

"A close examination of Rule 97 (Classification of Work Rule) reveals that it does not specifically set out the work performed in this case."

Apparently the author of this Award was remiss in not reading the description of this work set out in both our Submission and Rebuttal Statements, i.e., that the work consisted of cutting, threading of nipples and pipe, and applying elbows and unions and connecting up to basin on the caboose - all of which is work clearly covered under the provisions of Rule 97.

It is also noted the author bases his erroneous decision on Award No. 5613. This Award would have absolutely no bearing on the instant case and we quote from the Award:

"In the instant case, breakdown of equipment occurred when no machinist was immediately available to make repairs which Carrier contends was necessary to avoid delay. To alleviate the situation, the only mechanic on duty at Leeds, a carman, was used to perform the necessary repair work, and Carrier's action under the circumstances cannot be described as a deliberate attempt to circumvent the applicable Agreement."

and a review of Award No. 5613 will show Leeds was in an industrial area on Carrier's line from Kansas City, Missouri to Osawatomie, Kansas, and not within the bounds of the Kansas City yards. Also, no machinist was available to perform the machinists' work and there was only a carman employed at Leeds. In the instant case, the work was performed within the bounds of the Greater North Little Rock Terminal and sheet metal workers were on duty and available had they been called.

LABOR MEMBER'S DISSENT TO  
AWARD NO. 7832, DOCKET NO.

Finally, the author, in referring to the 1950 letter of the Carmen's General Chairman to a Local Chairman, states:

"----the record yields no information as to the type of work involved, where it was performed, or any other information which might be helpful in our determination of the instant case."

Again, it is obvious that the author of the Award was remiss in that the reading of the General Chairman's letter will show that the Local Chairman was located at Jefferson City, Missouri, where the claim initiated, and his letter is crystal clear that the work performed involved the installation of water pipes on two (2) work cars, which is comparable to the work performed in the instant case, and in his letter to Carmen's Local Chairman made no qualification when he stated that such work belongs to Sheet Metal Workers under Rule 97.

For the foregoing reasons, we vigorously dissent to this palpably erroneous Award.



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M. J. Cullen,  
Sheet Metal Workers' Int'l Assn.  
Labor Member - 2nd Division