

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International Association
St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the controlling agreement, particularly Rule 94, at Consolidated Freight Car Shops, Springfield, Missouri on June 23, 27, 1977 and July 6, 11, 12, 13, 1977, when they improperly assigned Machinist Carter the duties of removing and installing of grease lines and air compressor piping on Industrial Brown Hoists Numbers 99022 and 99025.
2. That accordingly the St. Louis-San Francisco Railway Company be ordered to compensate Sheet Metal Worker C. L. Atwood four (4) hours for each violation, total twenty-four (24) 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.

The claim before the Board concerns "removing and installing of grease lines and air compressors piping" on two Industrial Brown Hoists, although the claim as originally expressed on the property is somewhat though not significantly broader.

The Sheet Metal Workers' classification of work rule (Rule 94) is not found to include such work with specificity, and no showing is made that the claimed work is exclusively performed by Sheet Metal Workers. More relevant, therefore, are provisions for incidental work.

Paragraphs (b) through (d) of the Incidental Work Rule - Sheet Metal Workers (From Article V of a May 12, 1972 National Agreement) read as follows:

- "(b) Work shall be regarded as 'incidental' when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances in order to accomplish a specific main work assignment, e.g. remove generator, replace governor, repair radiator, etc.
- (c) Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish a specific main work assignment, except that when the time normally required to accomplish the incidental work exceeds one hour the rule shall not apply to such work assignment.
- (d) In no instance will the work of overhauling, repairing, modifying or otherwise improving equipment be regarded as incidental work regardless of how much or how little time it might require."

In arguing in reference to the Incidental Work Rule, the Organization places particular emphasis on Paragraph (d), which, where applicable, negates the permissive use of "incidental work" definition for the Carrier. In the instance of Car No. 99022, applying whichever claim is made by the Organization, the Board finds Paragraph (d) inapplicable in that no repairs were made. As to Car No. 99025, no showing is made that the change of travel gears itself was improperly performed by Machinists, and the work claimed by the Organization is clearly incidental to such work, both as to its nature and the time required to perform it.

On this basis, the Board finds no merit in the claim itself. Thus, it is unnecessary for the Board to examine the question of whether C. L. Atwood is a proper claimant, considering his place of assignment, as well as the presence within the work area of another Sheet Metal Workers.

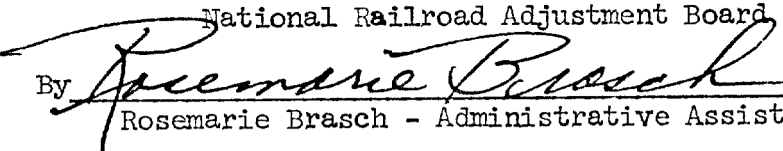
The third party involved, the International Association of Machinists and Aerospace Workers, was notified of the dispute and indicated that it felt no reply on its part to be necessary.

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 27th day of June, 1979.

LABOR MEMBERS' DISSENT TO AWARD NO. 7988, DOCKET NO. 7886-T


The Neutral has exceeded his statutory authority by deciding this case on the basis of the Carrier's reference to the Incidental Work Rule.

Any dispute arising under the framework of the May 12, 1972 Agreement between the Sheet Metal Workers and the Carriers signatory to the Agreement, are to be settled by the manner contained in the June 5, 1972 Letter Agreement, and in no other way.

The June 5, 1972 letter is in conformity with paragraph (h) of the May 12, 1972 Agreement, and the Referee should have been aware of it.

The Referee was obligated to decide the case solely on the basis of Rule 94, and no other.

By permitting the Carrier to inject the Incidental Work Rule, and ignoring the violation of the time limits contained in the same rule, the Majority is in serious error, and the claim should have been allowed as presented.


M. J. Cullen
Labor Member