

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
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 97 and No Transfer of Work Understanding of May 1, 1940, when they arbitrarily transferred the work of making and piping ninety-eight (98) seventy (70) gallon heating fuel tanks for new cabooses from the Sheet Metal Workers' Craft to the Carmen's Craft, DeSoto, Missouri, beginning August 1, 1977.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Sheet Metal Worker Welder Kenneth Pilousek and Sheet Metal Worker Helper David Charboneaw as follows:
 - a) Sheet Metal Worker Welder Pilousek in the amount of 608 hours at rate of \$7.69 per hour at pro rata rate beginning August 1, 1977.
 - b) Sheet Metal Worker Helper Charboneaw in the amount of 608 hours at rate of \$6.34 per hour at pro rata rate beginning August 1, 1977.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

This dispute involves the construction of 100 70-gallon heating fuel tanks for new cabooses built by the Carrier. The first two such tanks were built and piped at the Carrier's facilities at Sedalia, Mo., by Sheet Metal Workers, and there is no dispute concerning this. The remaining 98 tanks were built at the Carrier's facilities in DeSoto, Mo. by Carmen. The Carrier

states without contradiction that the piping for the 98 tanks was subsequently performed at Sedalia by Sheet Metal Workers, and thus the claim insofar as it refers to piping has no basis or possible remedy, since the work was done by members of the Claimant organization.

The Sheet Metal Workers contend that the building of the tanks should have been performed by members of the Claimant organization.

The Sheet Metal Workers contend that the building of the tanks should have been performed by members of their craft, based on Rule 97 and the No Transfer of Work Understanding of May 1, 1940. The Organization also refers to a conversation with Carrier management representatives on August 31, 1976.

It is the Carrier's position that the work of construction of tanks is properly that of Boilermakers, but that since no Boilermakers were employed at DeSoto, the Carrier could (and did) assign the work as it deemed appropriate -- namely, to Carmen.

The fact that Sheet Metal Workers built the two fuel tanks at Sedalia, but were not so employed at DeSoto on the same work is certainly cause for the Organization to raise a question as to the assignment of work. Given no more than this, it would be reasonable to support the Sheet Metal Workers' position. But it is not the responsibility of the Board to assign work, but rather to determine if the Carrier has violated any rule or, in some circumstances, broadly accepted practice, in its determination of work assignment. It is on this basis alone which the Board must resolve this dispute.

Rule 97 reads in pertinent part as follows:

"Sheet metal workers ... work shall consist of tinning, coppersmithing and pipefitting in shops, on passenger coaches; cabooses and commissary cars ... and all other work generally recognized as sheet metal workers' work."

This rule does indeed refer specifically to cabooses, but only as to "tinning, coppersmithing and pipefitting". It should be borne in mind that Sheet Metal Workers did perform the piping on all the disputed fuel tanks.

The rule applicable to Carmen is even more general. Rule 117 reads in part:

"Carmen's work ... shall consist of building ... of all passenger and freight cars..."

The inclusion of cabooses under the general term "freight cars" is recognized.

In sharp contrast is the Boilermakers' classification of work rule. Rule 62(a) reads in part:

"Boilermakers' work ... shall consist of laying out and building boilers, tanks, and drums ..."

Here the reference to tanks is specific. The significant application of this rule in the present dispute is further supported by the Memorandum of Agreement dated March 6, 1958, which provided that Boilermakers "will have jurisdiction of work in the use of Thirteen (13) gauge and heavier of plate metals". The work involved herein was of heavier than 13 gauge. Both the Boilermakers and the Sheet Metal Workers are signatories to this Memorandum.

It is clear that the Sheet Metal Workers cannot claim the building of fuel tanks as exclusively their work where such is not specified in their classification of work and is so specified in the Boilermakers' classification of work rule.

There being no Boilermakers assigned to the Sedalia facility, the Carrier relied (properly, the Board finds) on Rule 26 (b) which reads as follows:

"(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."

This rule permits, under the existing circumstances, the assignment of the work to Carmen, Sheet Metal Workers, or possibly others. The Carrier selected the Carmen.

As to the Transfer of Work Understanding of May 1, 1940, signed by the Carrier, this states as follows:

"It is not our policy to arbitrarily transfer work from one craft to another without an understanding having been had prior to the transfer with the appropriate representative of the employees and this policy will be followed."

Based upon the fact situation related above, the Board finds herein no arbitrary transfer of work from one craft to another. The work involved was not exclusively that of Sheet Metal Workers nor did a "transfer" occur at the Sedalia facility.

Finally, as to the so-called commitment by Carrier officials in 1976, this is not based on any written agreement or even a communication from the Carrier. The Organization quotes the Carrier representative as having said in a conference that "subsequent program of building cabooses by the Missouri Pacific Railroad would be performed for the most part in Sedalia, Missouri, and that the sheet metal workers in particular, would be assigned to our work under the classification of work rule with the schedule agreement". Even relying on this, what the Carrier intended by "our work" and what the Sheet Metal Workers inferred could well be at variance. For example, piping was performed by Sheet Metal Workers. Further, Sheet Metal Workers were employed

in building tanks at Sedalia. This does not create a requirement, absent a rule so providing, for this to occur elsewhere. No rule prohibits the Carrier from determining where such work is to be performed.

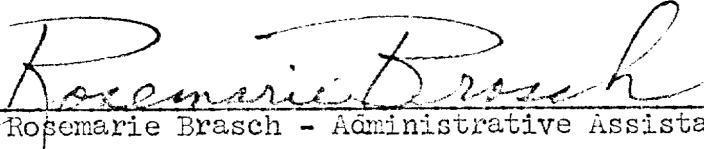
A W A R D

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 24th day of October, 1979.