

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 65, when on May 9, 1977, other than Sheet Metal Worker was assigned the duties of using welding torch to unsolder copper pipes from compressor on air conditioner, change and apply new compressor and resolder copper pipes to the compressor, Diesel Shop, Fort Worth, Texas.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Sheet Metal Worker E. W. Sparks in the amount of four hours (4') at pro rata rate, May 9, 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 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 instant claim arose when, on May 9, 1977, Carrier assigned an electrician at its Fort Worth, Texas Shops to unsolder copper pipes from a compressor on a window unit air conditioner, change and apply a new compressor, and resolder copper pipes to the compressor. Petitioner alleges such action violated Rule 65 and that electricians have not performed the pipe work which is at issue here.

Rule 65, Classification of Work, reads:

"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 and steam pipes; the operation of babbitt fires; oxy-acetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work."

Petitioner cited affidavits as to performance of the work in question by Sheet Metal Workers.

The Electrical Workers' Organization, the third party in the instant dispute, filed a submission contending that the work involved was properly assigned to them in accordance with past practice and submitted statements, including one from the Master Mechanic at Fort Worth, that electricians had performed such work.

Carrier took the position that electricians have, for years, performed "all the repair work on air conditioner units such as changing compressors, repairing freon leaks and changing the units ..."; that electricians at Fort Worth performed all work on window air conditioners, including unsoldering and soldering the coil from the air compressor; that such work -- a past practice -- was performed by the electricians prior to the effective date of the applicable Agreement.

Carrier also argued that the Sheet Metal Workers' Classification of Work Rule makes no mention of air conditioning work and that the Sheet Metal Workers' Organization had served a Section 6 notice seeking to have piping in connection with refrigerants inserted in its Classification of Work Rule, but that work on air conditioners has not been contracted to that Organization especially with respect to tubing soldered to air conditioning units.

We have examined the Awards cited by both parties and find both sustaining and denial Awards. The Awards cited refer either to disputes on other Carriers or to other locations of the Carrier involved in the instant case. In addition, the claims involved in these prior Awards dealt with, for example, the installation of a centralized combination heater and air-conditioning system and a dispute over the assignment of piping work from the cooling radiator outside the building to the compressor located within the structure, (Award 6744); maintenance of air conditioned coaches involving the repair and installation of new tubing to carry the freon gas used in air conditioning units installed on such cars as well as the servicing of such freon gas lines (Award 2898); restoring a three-ton air conditioner to service, involving the disconnection of freon gas piping from the compressor to condensor coil and the installation of a new compressor which was of a different type and thus required cutting, fitting and silver soldering various lengths of pipe in connecting the new compressor (Award 7579); and disconnecting refrigerating coils from a degreasing machine by melting the solder joints, removing the coils and resoldering the joints to reconnect the coils, without performing repair work on the coils themselves (Award 6924).

The record indicates that at Carrier's Fort Worth facility, an electrician filed a claim on February 28, 1977 because a Sheet Metal Worker, on whose behalf the instant claim was filed, "changed out a shop air conditioner compressor on

February 24, 1977", and in so doing "disconnected and connected piping to the compressor". Carrier's Master Mechanic Dent sustained the electrician's claim on April 14, 1977 stating in part, "Air conditioning work is not covered in the agreement as belonging to any particular craft"; and "In accordance with the long-standing practice of the electricians performing air conditioning work, this claim will be honored on a local level". The claim currently before us was filed May 18, 1977 -- about one month later.

No probative evidence has been presented that at Carrier's Fort Worth location, electricians have not performed work of the nature here in dispute, as a matter of past practice. This is borne out by the payment of the claim to the electricians on April 14, 1977 and the reasons cited by Master Mechanic Dent for sustaining that claim.

This is buttressed by the fact that no evidence was furnished by Petitioner to contradict the statement of Master Mechanic Sheridan, who served in that position at Carrier's Fort Worth facility from April 16, 1977 to August 31, 1978. In denying the instant claim, Master Mechanic Sheridan wrote the Organization's Local Chairman:

"I am advised by the electricians at the Fort Worth facility, that for many years the electricians have, in fact, performed all the repair work on air conditioner units such as changing compressors, repairing freon leaks and changing the units as well as other electrical repairs as required."

The Electricians' Organization also submitted a statement from Master Mechanic Sheridan which stated that during his tenure as Master Mechanic, "the Electricians did all pipe work in connection with repairs to air conditioning equipment in Fort Worth and Arlington, Texas".

Given the evidence of past practice at this location, and no record of any prior protest by Petitioner at this location with respect to electricians performing the disputed work, we must recognize and give effect to such long-established past practice, particularly when the work complained of is not explicitly assigned to Petitioner under its Classification of Work Rule. Accordingly, we find that the established practice was for electricians to perform the work at issue and that such practice prevails. We will deny the claim.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of August, 1980.