

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: { International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Carrier violated the terms of the agreement when it assigned other than Boilermakers to perform Boilermakers work.
2. That accordingly the Carrier be ordered to compensate the following Boilermakers; Bus Chernisky #627555, Ron Czynski #539868, Robert Burtnette #632178, Jim Richmond #623372, fifty two (52) hours each at the pro rate, rate of pay for a total of 208 hours.

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 Organization alleges that on or about the period of October 12 through October 19, 1979, the Carrier violated its Classification of Work as set forth in Rule 79 of the Controlling Agreement, effective July 16, 1946, with revisions to July 1, 1951, when Carrier assigned employees of both the Machinist and Sheet Metal Crafts to assist employees of its craft in the assembly of a metal building to house the Vacu-Blast machine, used in sand blasting operations. Rule 79 reads, in pertinent part, as follows:

"CLASSIFICATION OF WORK

- (a) Boilermakers' work shall consist of laying out, cutting apart, building, or repairing boilers, tanks, and drums; inspecting, patching, riveting, chipping, calking, flanging, and flue work; building, repairing, removing and applying steel cabs and running boards; laying out and fitting up any sheet-iron or sheet-steel work made of 16-gauge or heavier (present practice between boilermakers and sheet-metal workers to continue relative to gauge of iron), including fronts and doors; ash pans, front end netting and diaphragm

work, engine ~~tender~~ steel underframe and pressed steel ~~tender~~ truck frames, except where other mechanics perform this work; removing and applying all stay bolts, radials, flexible caps, sleeves, crown bolts, stay rods, and braces in boilers, tanks and drums; applying and removing arch tubes; operating punches and shears for shaping and forming, pneumatic stay-bolt breakers, air rams and hammers; bull, jam, and yoke riveters; boilermakers' work in connection with building and repairing of steam shovels, derricks, booms, housing, circles, and coal buggies, I-beam, channel iron, angle iron, and T-iron work; all drilling, cutting and tapping, and operating rolls in connection with boilermakers' work; oxyacetylene, thermit, and electric welding on work generally recognized as boilermakers' work, and all other work generally recognized as boilermakers' work. It is understood that present practice in the performance of work between boilermakers and carmen will continue."

The Organization maintains the physical structure of the subject building to be as follows:

"The Building in question is 10'8" wide, 10'4" deep and 10'8" high. It has two (2) doors 5'10" and a standard service door at the side. The building was fabricated from 4 - 6" channel iron beams, to support the corners, 4 - 8" channel iron beams to form the base. The sides are fabricated from 3/16" xx 2" x 3" angle iron with 12 gauge sheet metal pannels welded to them. The large front doors are fabricated from 2" x 2" x 3/16" angle iron covered with 12 gauge sheetmetal. The roof consists mostly of 3/16" x 2" x 2" angle iron placed to form a vented roof." (Emphasis ~~supplied~~.)

The Organization argues that when these physical elements of the building set forth above are matched against its Classification of Work Rule, Rule 79, it is readily apparent that the work in question belongs to employees of its craft; specifically the most pertinent being the angle iron and the 12 gauge sheet metal which is heavier than 16 gauge sheet metal. The Organization further argues the work accrues to employees of its craft based on past history and practice in that it asserts the Boilermaker Craft has in the past twenty-five (25) years built two buildings to house sand blast operations and that this fact has not, at any time, been refuted by the Carrier.

Carrier asserts the Organization's reliance on Rule 79 is an attempt on their part to equate the word housing which appears in Rule 79 with the erection of the building in which the Vacu-Blast Machine is located. Such conclusion, Carrier argues, cannot properly be made inasmuch as the housing referred to in Rule 79 pertains solely to housing which is designed and used to protect moving parts of equipment machinery, and not to buildings such as the one in dispute in the ~~instant~~ case. Thus Carrier maintains, Rule 79, can lend no proper support

to the Organization's claim and accompanying delegations. Carrier additionally argues the Organization's attempt to rely on past practice as support for the instant claim must necessarily fail in that the Organization has been unable to establish the existence of such a past practice granting to its craft employees the type of work in question.

In its ~~comprehensive~~ review of all the facts and circumstances surrounding the instant case, the Board finds the Organization has failed in its burden of proof to offer either contractual support or something of greater significance with regard to past practice other than mere assertion, in its effort to substantiate the subject work ~~is~~ that which accrues to the members of its craft. Had the Organization been able to demonstrate, without doubt, that 16 gauge metal or heavier was involved in the assembly of the subject building, this Board would then have been persuaded the work in question belonged to members of the Boilermakers' Craft. Absent too, a definitive showing of a past practice the Board has no other alternative but to deny the instant claim. Finally, as an aside, the Board notes no economic hardship was suffered by the Claimants as they each were compensated for their share of the work performed in assembling the subject building.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of March, 1982.