Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9028
SECOND DIVISION Docket No. 8549-T
2-MP-SM-'82

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

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

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the controlling Agreement particularly Rule 97 and Transfer of Work Understanding of 1940, when on August 10, 1978 other than Sheet Metal Workers were assigned the duties of welding Igloo water cooler brackets on Engines 1260 and 1274, Pike Avenue Diesel Shops, North Little Rock, Arkansas.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Sheet Metal Workers J. E. Garrison and S. V. Pruss two (2) hours each 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 were given due notice of hearing thereon.

Complainant Organization, the Sheet Metal Workers, alleges Carrier improperly assigned work belonging to its Craft employees to employees of the Boilermaker Craft. Generally, the disputed work entailed the mounting of a new type of water cooler manufactured by Igloo on the outside of the cab of diesel locomotives. Previously, the water coolers had been located inside the cab of the engine and consisted of a water jug which was filled and turned upside down to fit in a holder, which held ice and had a spigot from which drinking water could be drawn. The holder for the water jug was fastened to the wall of the cab of the engine.

Specifically, in dispute is the work of welding the brackets necessary to mounting and holding the new type of water cooler. Two brackets are involved. The first bracket is the support bracket which consists of one piece of angle iron and one piece of flat bar which is welded onto the bulkhead of the diesel engine cab. Both the angle iron and the flat bar are one-quarter (¼) inch thick. The second bracket is the cooler bracket, a factory produced product purchased by the Carrier. The cooler bracket is welded to the support bracket and at the point this welding is done, Carrier contends the thickness of the cooler bracket is 10-gauge iron.

Complainant Organization argues that its Classification of Work Rule, Rule 97 of the Controlling Agreement bearing effective date of June 1, 1960, clearly reserves to its craft employees the disputed work. In pertinent part, Rule 97 reads as follows:

> "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 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 *** oxyacetylene, thermit and electric welding on work generally recognized as Sheet Metal Workers' work *** and all other work generally recognized as Sheet Metal Workers' work."

Complainant Organization alleges that in the past employees of its Craft have always performed the work on and associated with water coolers and that Carrier's action of assigning Boilermakers the job of welding the subject brackets is in direct violation of the No Transfer of Work Understanding in effect since May 1, 1940, this Understanding reads 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 employes and this policy will be followed."

In support of its contention the subject work has accrued to the employees of its Craft, Complainant Organization has submitted into evidence a statement by a Sheet Metal Worker of 31 years with the Carrier who attests that during the years of 1967 through 1975 he worked a general work job in the Pipe Shop and at many times during this period would work a few days almost every week as extra helper in the Water Cooler Department. For the years 1975 to 1977, Davidson, the sheet metal worker, stated he had the water cooler job bid in the Pipe Shop. Davidson further stated he worked on water coolers along with other sheet metal workers and went on to describe the various duties involved among which had to do with fabricating water cooler brackets.

Complainant Organization also alleges that the initial work in designing the cooler bracket purchased on the outside by Carrier was performed by H. S. Harbour, a sheet metal worker at Carrier's Pipe Shop facility. It follows, Complainant Organization asserts, that if a sheet metal worker designed the cooler bracket that it would also be the job of a sheet metal worker to weld and install the brackets.

Complainant Organization further alleges that the subject work was assigned by Carrier to boilermakers as a matter of convenience as Carrier did not believe there was an adequate number of sheet metal workers available to perform the work. Such work by Carrier's own admission, was to have taken place on all its diesel locomotives. However, this never came to pass as some state laws

prevented the mixing of ice with water. As a result Engine 1274 was the only engine converted.

Carrier notes that when the conversion from the old type water cooler to the new type was about to commence it sought the opinion of both the Sheet Metal Workers and Boilermakers' Crafts as to which of its employees would perform the installation of the water cooler brackets. As no agreement was reached between the two Organizations, Carrier contends it unilaterally determined the disputed work belonged to Boilermakers on the basis of the gauge of metal involved pursuant to a Memorandum of Agreement dated March 6, 1958, allocating work between the two crafts. This Memorandum of Agreement entered into by and between the Boilermakers and Sheet Metal Workers reads as follows:

> "It is agreed that the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers will have jurisdiction of work in the use of thirteen (13) gauge and heavier of plate metals.
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> It is further agreed that the Sheet Metal Workers' International Association will have jurisdiction of work in the use of fourteen (14) gauge and lighter of plate metals.
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> It is further agreed that where work is to be transferred from one craft to the other that involves a full time assignment and where there is an employee regularly assigned, he will remain as assigned, performing the work until such time as he may vacate the job by the exercising of seniority, retirement or other cause. However, in a reduction of force, if the employee so assigned should be laid off in seniority order, and the work will continue to be performed it will be assigned to the craft to which it has been awarded until the laid off employee returns to service through the restoration of forces.
>
> This understanding is intended only to settle jurisdicational disputes between the two organizations, parties to this agreement, and is not to be construed as affecting the rights or jurisdiction of any other craft.
>
> The foregoing to become effective March 31, 1958."

Since the metals involved in both the support and cooler brackets was heavier than thirteen (13) gauge, it determined the work of installing the subject brackets was that of Boilermakers. Complainant Organization refutes Carrier's position with regard to utilizing the provisions of the above stated Memorandum in determining jurisdiction, arguing this Memorandum does not apply to either angle iron or the flat bar, material composing the support bracket. The inapplicability of the Memorandum to the metals used for the support brackets is precisely the cause, argues Complainant Organization, of Carrier's violating the No Transfer of Work Agreement of 1940.

The Boilermakers' Organization on the other hand argues the No Transfer of Work Agreement of 1940 is irrelevant in the instant case as its Classification of Work Rule, Rule 62(a) specifically reserves to its Craft employees the right to perform the disputed work. Rule 62(a) reads in pertinent part as follows:

> "Rule 62(a) Boilermakers' work, including regular and helper apprentices, shall consist of laying out, building or repairing ... laying out and fitting up any sheet iron or sheet metal work made of 16 gauge iron or heavier in connection with boilermakers' work ... engine tender and steel underframes and steel tender truck frames ... stay rods and braces in boilers, tanks and drums; ... tapping out holes and running in staybolts in new and old work; ... operators of punch and shear machines except for cutting bar stock and scrap; ... boilermakers' work in connection with the building and repairing of steam shovels, derricks, booms, housing, circles and coal buggies; I-beams, channel iron, angle iron and T-iron ... oxyacetylene, thermit and electric welding on work generally recognized as boilermakers' work, ... and all other work generally recognized as boilermakers' work in the Maintenance of Equipment Department."

Furthermore, the Boilermakers rely too on the 1958 Memorandum entered into by it and the Sheet Metal Workers as supporting its position that employees of its Craft are rightfully entitled to perform the disputed work and in conjunction with this point notes the Complainant Organization has completely avoided in its argument making any reference to the gauge of metals used for making the support and cooler brackets.

In our review of the case the Board notes that while Complainant Organization asserts the cooler bracket, (which was purchased from a factory by Carrier), could have been made of lighter gauge metal, we cannot find anywhere in the record where Complainant Organization has proven this point or where it has successfully countered Carrier's assertion that at the point of the weld the cooler bracket was of ten (10) gauge thickness. Furthermore we are unsure as to whether Complainant Organization's assertion the 1958 Memorandum is not applicable to angle iron and flat bar is correct. At the same time we are persuaded by the evidence before us that work both direct and associated with water coolers has in the past been performed by employees of the Sheet Metal Craft and not by employees of the Boilermaker Craft. We believe it was because of this past work by Sheet Metal Workers and the materials involved which caused Carrier to first seek a resolution of this matter by turning it over to the two Craft Organizations to make a determination. In the absence of such a determination, it is noted Carrier justified its assignment based on the 1958 Memorandum set forth in pertinent part above.

In balancing the evidence before us we are convinced that when taken together, the 1958 Memorandum, the Boilermakers' Classification of Work Rule and the fact the coolers involved were of a new type, represents proof of a preponderant nature favoring Carrier's determination to ultimately assign the disputed work to employees of the Boilermaker Craft. We therefore find the instant claim must be denied.

Award No. 9028
Docket No. 8549-T
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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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of April, 1982.