

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (Sheet Metal Workers International Association
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(Seaboard Coast Line Railroad Company

Dispute: Claim of Employee:

- "1. On or about July 11, 1979, Carmen was assigned by Carrier to assist Sheet Metal Workers to disconnect and connect steam connectors on passenger cars in St. Petersburg, Florida Shop and Yard.
2. Claim in behalf of Sheet Metal Workers Lloyd, Gaudette, Lockard, Prewitt, Colbert, Payne, Barnett, Nelson, Smith and Banks for eight (8) hours per shift at the applicable overtime rate of pay. This to be divided equally between claimants.
3. This being a continuous claim.
4. That Carmen's craft be stopped assisting Sheet Metal Workers in performance of Sheet Metal Workers' work."

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.

In late 1977, members of the Sheet Metal Workers' International Association (hereinafter Organization) presented claims to Carrier account Carmen Coupling and Uncoupling Steam Connectors on passenger cars in St. Petersburg, Florida. Subsequently, the Organization presented Carrier with eleven statements by sheet metal workers stating that they had always performed the work of coupling and uncoupling steam connectors on passenger cars in St. Petersburg.

On June 7, 1979, Carrier reached agreement with the Organization to compromise the claims that had been initiated in 1977. While Carrier's motive or motives for compromising the claims are disputed, suffice it to say that Carrier had no evidence from the Carmen when it determined to resolve the 1977 claims. One element of the compromise was that Carrier agreed to assign members of the Organization to perform the disputed work.

On July 9, 1979, the Carmen's General Chairman objected to Carrier's assignment of the work to the sheet metal workers. He argued that the allegations concerning the

past practice, regarding the coupling and uncoupling of steam connectors on passenger trains, which had been made by the Organization were incorrect. The General Chairman supplied Carrier with statements to support the view that the disputed work had always been performed by Carmen both at St. Petersburg and throughout the system.

Given this new information, Carrier determined to "double crew" every instance of coupling and uncoupling of steam connectors on passenger trains at St. Petersburg. This was designed as interim method until the issue of which craft was entitled to the work was resolved.

Carrier attempted to establish a tri-party Public Law Board consisting of Carrier, Brotherhood of Railway Carmen and the Organization. This effort was unsuccessful.

Instead, Public Law Board No. 2467 was established between Carrier and the Carmen. The issue for that Board was whether Carrier's assignment of members of the Organization to perform the coupling and uncoupling of steam connectors on passenger coaches at St. Petersburg violated the Agreement between Carrier and the Carmen. The Organization was given the opportunity to appear before the Board, present written briefs and to participate in all argument. The Organization did so participate.

On December 3, 1979, Award No. 1 of Public Law Board No. 2467 was issued. Chairman Warren S. Lane, writing for the Board stated:

"Based upon the record in the instant case, the Board concludes that this dispute involves a condition wherein the Carrier erred in the assignment of the work at St. Petersburg, Florida, and that such work should therefore be returned to the Carmen."

Thus, it was established in Public Law Board No. 2467 that the disputed work belonged to the Carmen. Since December 1979, Carmen have performed this work exclusively at Carrier's facility at St. Petersburg, Florida.

Prior to the issuance of the Award in PLB No. 2467, the organization filed a claim on behalf of Sheet Metal Workers Lloyd, Gaudette, Lockard, Prewitt, Colvert, Payne, Barnegt, Nelson, Smith and Banks. It sought eight hours per shift at the applicable overtime rate of pay. This money was to be divided equally between the Claimants. The period of the claim is from July 11, 1979 until the award in PLB No. 2467 on December 3, 1979. The Carmen were invited to introduce a Third Party submission and to participate in the oral arguments before this Board. It did so participate.

The Organization argues that Rule 85 of its Agreement dated January 1, 1968, specifically covers the work in question. It contends that the specific words of "connecting and disconnecting of steam pipes, also pipe fitting at shops, yards, building, on passenger coaches," are all work generally recognized as being sheet metal workers' work.

The Organization also asserts that prior to September 1977, that its membership performed the disputed work. It asserts that letters from its members as well as Carrier's own records indicate that sheet metal workers have performed coupling and uncoupling of steam connectors except in the situation that occurred in late 1977 where Carrier changed the practice due to the fact that no sheet metal worker was assigned to the second shift. In the Organization's view, the change in the practice by Carrier in 1977, violated the Letter of Understanding dated December 20, 1967

In all, the Organization maintains that Rule 26, Assignment of Work, Rule 84, Sheet Metal Worker's Special Rules, Rule 85, Classifications, and the Letter of Understanding dated December 20, 1967 and the historic practice of the parties support its contentions. The Organization asks that the claim be sustained as presented.

The Carmen argued that the disputed work belongs to its craft, It asserts that PL Board No. 2467 established, once and for all, that its membership has a right to perform the disputed work. It insists that Rule 85 of the SMWIA Agreement was not intended to cover the coupling and uncoupling of the steam connectors to make a temporary connection of the pipes between cars. Instead, it asserts at Rule 100 and Article V of the September 15, 1964 Agreement provides that the carmen have the exclusive right to perform the work in St. Petersburg, Florida.

Carrier argues that the work of coupling and uncoupling steam connectors on passenger cars is not reserved to employees of the SMWIA either by rule or by system-wide past practice. It insists that the connection here is not the type of permanent connection that is customarily thought to be sheet metal workers' work. The passenger car is of a more temporary nature. Therefore, it maintains that Rule 85 does not grant this work to sheet metal workers.

Carrier also urges that the SMWIA has failed to establish that the work has been performed exclusively by sheet metal workers on a system-wide basis. It notes that the evidence as to practice is not unequivocal.

It appears to us that the underlying issue at the heart of the instant dispute has been previously determined in Award No. 1 of Public Law Board No. 2467. There, the identical issue at the same location during the same period of time was resolved. In fact, the same fundamental arguments presented by each of the litigants here was presented and considered in PL Board No. 2467.

It would be illogical and inconsistent with the time honored doctrine of stare decisis for us to relitigate that issue here. Predictability and consistency, which are of value to all concerned, would be destroyed. Given the fact that nothing presented here convinces us that the decision in PLB No. 2467 was palpably erroneous, we must determine that the sheet metal workers have no right to the disputed work.

Having decided that the sheet metal workers have no right to the work, it logically follows that there is no basis for the claim presented. That is, sheet metal workers never had a right to claim the disputed work. Therefore, there is no basis for determining that the Claimants have any right to additional compensation for the period from July 11, 1979 to December 3, 1979. In fact, we must conclude that members of the Organization received a "windfall" during the period of time that Carrier "double crewed" every instance of coupling and uncoupling the steam connectors on passenger trains at St. Petersburg, Florida.

For all of the foregoing, we shall deny the claim in its entirety.

A W A R D

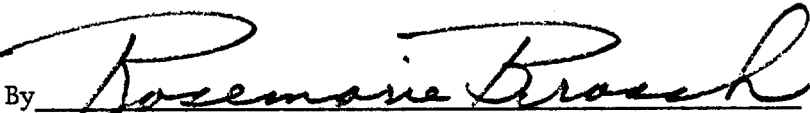
Claim denied.

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Award No. 9234
Docket No. 9244-T
2-SCL-SMW-'82

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 22nd day of July, 1982.