Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9236
SECOND DIVISION Docket No. 9341-T
2-L&N-SM-'82

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
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(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That the Louisville and Nashville Railroad Company violated the controlling agreement, particularly Rule 87, when on or about November 8, 1979, Management assigned Machinist Robert Newton the duties of disconnecting and removing cab heater, replacing and connecting heater hoses on Track Mobile, Boyles Car Shops, Birmingham, Alabama.

2. That accordingly the Louisville and Nashville Railroad Company be ordered to compensate Sheet Metal Worker W. V. Reed four (4) hours 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 waived right of appearance at hearing thereon.

On November 8, 1979, the Carrier assigned a Machinist to repair a trackmobile at Boyles Car Shop in Birmingham, Alabama. During the course of repairing the trackmobile, the Machinist removed and reconnected several heater hoses and removed and replaced the cab heater. The record does not disclose precisely how much time it took the Machinist to remove and replace the cab heater and hoses. Claimant, a Sheet Metal Worker, alleges that a member of the sheet metal worker craft should have been assigned to perform the disputed work and, as a result of the alleged violation of Rule 87, Claimant seeks four hours of pay at the straight time rate.

The Organization concedes that a Machinist may properly repair a trackmobile but that, on November 8, 1979, the Machinist performed work beyond the jurisdiction of his craft when he disconnected and reconnected the cab heater and heater hoses. According to the Organization, Rule 87 expressly reserves the disputed work to Sheet Metal Workers and therefore, the Carrier is absolutely prohibited from assigning the work to a member of another craft.

The Carrier raises several defenses. First, the Carrier vigorously asserted on the property that there is a well entrenched past practice going back twenty years that Machinists have usually performed the work in dispute. Second, pursuant

to the incidental work rule, as amended, the Machinist could properly perform the disputed work because it was a minor task which was incidental to his primary assignment, i.e. the repair of the trackmobile. Third, the Carrier characterizes this claim as a controversy between two competing crafts over which craft should perform the work. The Carrier urges this Board to summarily dismiss this claim because the two crafts have not complied with the procedures for settling jurisdictional disputes set forth in Appendix A of the applicable Agreement.

The International Association of Machinists and Aerospace Workers participated in this dispute during the handling of the claim on the property and before this Board. Though the Machinists' Organization took what appears to be inconsistent positions on the property, the record discloses that the Machinists have not specifically asserted an exclusive right to perform work under its classification of work rule. However, the Machinists did declare that Machinists have performed similar work in the past on this property.

Inasmuch as the Machinist craft is not asserting an exclusive right to perform the work in controversy, no real jurisdictional dispute exists. Therefore, the Organization was not obligated to utilize the procedure in Appendix A as a condition precedent to progressing this claim on the property and before this Board.

The issue becomes whether the disputed work is reserved exclusively to Sheet Metal Workers by rule or past practice.

Rule 87 refers to the connection and disconnection of pipes but is silent with regard to cab heaters and heater hoses. Absent an express reference to the disputed work in the classification of work rule, the Organization shoulders the burden of demonstrating that the disputed work has been historically, customarily, traditionally and exclusively performed by Sheet Metal Workers. Second Division Awards No. 5718 (Ritter) and No. 6145 (McGovern). After carefully perusing the evidence in the record as well as the arguments advanced by all parties, this Board concludes that the work involved in this dispute has, in the past been performed by both Machinists and Sheet Metal Workers. Thus, the Organization has fallen short of its burden of proving with competent evidence that the disputed work is exclusively reserved to Sheet Metal Workers.

We emphasize that our decision applies only to this particular task, on this date and on this property. Also, we need not consider whether or not the disputed work qualifies as incidental work within the meaning of the incidental work rule because the Organization has failed to show the disputed work belongs exclusively to Sheet Metal Workers.

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 22nd day of July, 1982.