

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(District Council 114
(
(Southern Pacific Transportation Co.

Dispute: Claim of Employes:

(1) That Carrier violated Rules 33 and 77 of the current Motive Power and Car Department Agreement on September 10, 1981 when work coming under said rules and generally recognized as Sheet Metal Workers work and historically performed by said employes, was arbitrarily assigned to other than Sheet Metal Workers.

(2) That Carrier pay claimant Sheet Metal Worker F. Hernandez 4 hours pay at straight time rate.

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 employes 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 September 9, 1981, at Carrier's El Paso, Texas Locomotive Maintenance Plant an eight (8) unit consist composed of diesel units 8363, 7848, 7869, 7781, 8562, 8306, 8338 and 7869 were coupled together on service track No. 6 by employees who were assigned to that track area. The appropriate tests were successfully conducted and the consist was then handled to El Paso yard for connection and movement of train 11EUASY06 with 11,000 tons, called to depart at 2:00 A.M., September 10, 1981. While in the process of moving the consist from the service track to the yard the outside hostler experienced no air brake problems, but when the outbound engineer tested the airbrakes at the departure point in the yard, he found that the brake valve would not function properly. It was determined that the air brake trouble was in the lead unit, 8363, and that it would be necessary to switch the lead unit with the second unit, 7848. In order to switch the units it was necessary to disconnect the air brake hoses between the two locomotives and so Roundhouse Foreman H. Maynard summoned Sheet Metal Worker Newport from his duties at the Service Track in order to perform this work. While Employee Newport was enroute, Foreman Maynard directed a Machinist, M. Carrasco, who was already at the site, to perform the disputed work so as to minimize the delay.

According to the record, said work (disconnecting of all MU hoses - rubber hoses with glad hand type connections used to connect the air supply piping for braking from locomotive to locomotive to the rest of the train between units 8363 and 7848) took approximately 15 minutes to perform; was performed entirely by Machinist Carrasco; and train 11EUASY06 departed the yard at 5:40 A.M., which was 3 hours and 40 minutes late.

A claim was filed by Organization on behalf of Sheet Metal Worker F. Hernandez for four (4) hours straight time and contending that Rules 77 and 33 of the current agreement were allegedly violated by Carrier as a result of this incident. Said claim was denied by Carrier and subsequently was properly appealed to this Board for resolution.

Organization's basic contention is that the disputed work (coupling and uncoupling of air hoses) is work which is normally performed by employees in the Sheet Metal Workers' classification and that Carrier's assignment of such work to an employee in the Machinists' classification was a violation of Rules 77 and 33. Additionally, Organization contends that Sheet Metal Workers were readily available and could have performed the work (as is confirmed by the fact that Employee Newport had been dispatched from the service track to perform such work); and that no evidence has been proffered by Carrier to substantiate the assertion that the situation was an "emergency".

Carrier argues that the air brake problem which occurred delayed the departure of the train and thus was an "emergency" and that Foreman Maynard's assignment of the disputed work to the Machinist, who was already at the job site, was done in order to expedite the completion of the work. According to Carrier, in an "emergency" situation Carrier "has broader authority in assigning employees than under normal circumstances" (See: Third Division Awards 21477 and 12777). Carrier also argues that the disputed work only consisted of a total of 15 minutes of work and that, under such circumstances, the de minimus doctrine is applicable (See: Second Division Awards 4361, 4787, 7079, 8778, 8815, 8816, 8817 and 8908).

Lastly Carrier contends that the disputed work was required to have been completed as soon as possible and that there is considerable doubt that Claimant, who was on his rest day on the particular day in question, would have been called in to perform the 15 minute task, particularly when an on-duty Sheet Metal Worker had already been called and was enroute for such purposes.

The facts of record in the instant case lead the Board to the following inevitable conclusions:

1. the work in question was work which was normally performed by employees in the Sheet Metal Workers' classification, and which, on the particular morning in question, should have been performed by Sheet Metal Worker Newport;

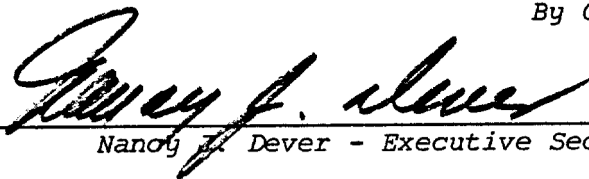
2. given the fact that the disputed work constituted a total of 15 minutes and the train itself was 3 hours and 40 minutes late in departing from the yard, it can hardly be said that the situation was one which could be considered as being an "emergency";
3. there is no probative evidence whatsoever in the record which would indicate that Claimant would have been the employee who would have been entitled to have been assigned to perform the disputed assignment, particularly when Claimant was on his rest day and would have had to have been called-in on a special assignment, and also when Sheet Metal Worker Newport was assigned to perform the work and, in fact, was enroute to do so; and
4. the de minimus doctrine does appear to be justified in this case since the work itself constituted such a short period of time and also because it cannot be shown that any eligible employee was actually damaged or suffered a loss because of Carrier's improper assignment.

A W A R D

Claim sustained but, because of the reasons indicated hereinabove, no compensation will be awarded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1984