

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
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

- 1) That the Carrier violated Rules 33 and 77 of the current Motive Power and Car Department Agreement on June 11, 12 and 13, 1981 when work coming under said rules of agreement 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 claimants Sheet Metal Workers R. Saber, J. Toney, M. E. Mitts and F. Mayberry 8 hours pay each at straight time rate and 6 hours pay at overtime rate of pay.

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 June 11, 12, and 13, 1981 (Thursday, Friday and Saturday), Carrier assigned three (3) Maintenance of Way Department employees to perform a total of approximately forty (40) hours of work in the Laboratory Building at Carrier's Sacramento Locomotive Works. Said work consisted of removing and/or installing metal cabinets, vents and duct work as well as plumbing in the Laboratory Building.¹

Organization contends that the work performed in the aforesaid assignment was sheet metal work and, as such, should have been assigned to Claimants who are employees of the Sheet Metal Workers' Classification at Carrier's Sacramento Locomotive Works. A claim in this matter was properly filed, denied by Carrier, and appealed by Organization, and is now before this Board for resolution.

1. "...disconnect and disassemble exhaust hood 2' x 11" in three pieces, 1 - 10" diameter and 2 - 8" diameter exhaust pipes, all made of 22 gauge sheet metal, disconnect and remove 17 material cabinets and 12 other slide out cabinets all made of 18 gauge sheet metal, disconnect and remove cleaning sinks, disconnect and remove 2 box like covers over helium and nitrogen gas valves made of .032 stainless steel, disconnect and remove 50' of 1" pipe, 10' of 1" pipe, 50' of 3/8" pipe, 15' of 1/4" pipe and 15 shut-off valves..." (Organization Submission, p. 2).

In support of its basic position, Organization contends that: (1) the work which is involved in the instant dispute is work which is provided for in the Sheet Metal Workers' Classification of Work Rule 77 of the Motive Power and Car Department Agreement and, therefore, belongs to employees in the Sheet Metal Workers' classification; (2) that such work has historically been performed on the property by Sheet Metal Workers; and (3) that Carrier has previously paid claims involving work which is similar to that which is involved herein.

Carrier's basic position is that: (1) the disputed work was originally performed in 1952-1953 by Maintenance of Way employees; (2) Rule 77 contains an exception which allows Maintenance of Way Employees to perform any work which had originally been performed by them even though that work might now be properly included in the Sheet Metal Workers' classification; (3) the disputed work is work which essentially has been performed by employees of both classifications and which, therefore, can be assigned by Carrier to either classification without penalty; and (4) any prior settlements which may have been made and which are contrary to Carrier's position herein are not binding because, if they were made at all, they were made "...at the local level without the knowledge and approval of officer of Carrier authorized to make and interpret agreements..." and the work is not exclusive to any one classification, and Organization has failed to produce any evidence of exclusive assignment of the disputed work.

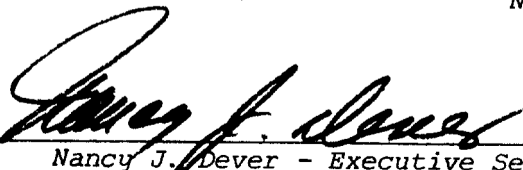
It is indeed distressing for this Board to realize that the focus of this dispute, and hence the central component in the resolution of the entire dispute itself, appears to be an assertion involving an incident which occurred more than thirty (30) years previously. The instant dispute is the quintessential example of a case in which the Board is called upon to make a ruling when there is a paucity of evidence in the record or where the critical evidence appears to be lacking. In such a situation, the Organization, as the moving party, bears the burden of proving its case, and absent such a showing, the Organization's claim must be rejected. Such is the determination in the instant case since the record, as sparse as it is, inevitably leads the Board to conclude as follows: (1) although the particular type of work involved herein is work which is normally performed by employees in the Sheet Metal Workers' classification, such work is not exclusively performed by said employees; (2) there is evidence in the record, which has not been successfully rebutted by the Organization, which indicates that the particular work involved may very well have been performed originally by Maintenance of Way employees; and (3) the exception contained in Rule 77, which is a negotiated rule, is patently clear and, as such, nullifies the Organization's basic contention since it allows for the sharing of work between Sheet Metal Workers and Maintenance of Way classifications in those situations wherein work which was originally performed by Maintenance of Way employees is now considered as Sheet Metal Workers' work and is presently performed by Sheet Metal Workers as a part of their regular assignment(s).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1985.