

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- 1) That the Atchison, Topeka and Santa Fe Railway Company violated the Controlling Agreement, particularly Rule 82 when they assigned Carmen and Labors (sic) the task of assembling 20 and 24 gauge sheet metal lockers at Car Department Locker Room, Kansas City, Kansas on dates of April 11, 1982 and continuing until June 11, 1982.
- 2) That accordingly, the Atchison, Topeka and Santa Fe Railway be ordered to compensate Sheet Metal Worker R. C. Carlson and thirty-seven (37) additional Sheet Metal Worker claimants in the amount of all monetary losses incurred by the claimants between the dates of April 11, 1982 and June 12, 1982, account Carmen and Labors (sic) employed by the Atchison, Topeka and Santa Fe Railway Company, performing the task of assembling of sheet metal lockers.

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.

The facts giving rise to the instant claim are in dispute. The Organization states that on April 11, 1982 through June 11, 1982, the Carrier assigned Carmen and Laborers the task of assembling lockers at the Carrier's Argentine Shop, in Kansas City, Kansas. In filing its claim, the Organization contends that such work rightfully belongs to the Claimants (Sheet Metal Workers). However, the Carrier states that the locker assembly work in question was performed by Carmen on April 15, 16, 23 and 24, 1982; furthermore, "one man" performed eight (8) hours of work assembling the lockers on each of these for a total of 32 hours.

In support of its claim, the Organization relies upon Rule 82 of the controlling Agreement which provides as follows:

"Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings and on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling for repairs and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter, including brazing, soldering, tinning, leading, and babbitting, the bending, fitting, cutting, threading, brazing, connecting of air, water, gas, oil, and steampipes; pouring of brass, 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."

An examination of Rule 82 discloses that it does not specifically provide that the task of assembling lockers is within the exclusive purview of work belonging to Sheet Metal Workers. Accordingly, as this Board has consistently held, the burden is on the Organization to prove by competent evidence that the work it exclusively claims has been exclusively reserved to the Sheet Metal Workers system-wide -- "historically, traditionally, and customarily". See, for example, Second Division Awards Nos. 5525 and 5921.

The record indicates that Sheet Metal Workers have assembled lockers at the Carrier's Argentine facility, at Kansas City, Kansas. However, no proof was presented by the Organization to indicate a showing of "system-wide exclusivity". Second Division Award No. 5525.

Further support for the position that the practice on the property must be viewed from a system-wide perspective, the final paragraph of Article II of the September 25, 1964 Agreement provides, in relevant part, as follows:

"The work set forth in this classification of work rules of the crafts parties to this agreement will not be contracted except ***."

This paragraph was amended on December 4, 1978 to read, in relevant part, as follows:

"The work set forth in the classification of work rules of the crafts parties to the Agreement and all of the work historically performed and generally recognized as work of the crafts pursuant to such classification of work rules will not be contracted except ***. In determining whether work is historically performed and generally recognized within the meaning of this Article, the practices at the facility involved will govern."

It may very well be that the amendment to the subcontracting rule has no direct effect on the language of Rule 82. However, it may be useful in understanding the intent of the parties on the meaning to be given to Rule 82. In this connection, had the parties considered the phrase work that is "historically performed and generally recognized" as belonging to the craft, which is contained in Rule 82 to be applicable on a location-by-location basis the parties would simply have repeated the language in Rule 82 rather than include specific language in the December 4, 1978 amendment to the effect that the contracting rule is applicable on a location-by-location basis.

There is another factor that must be considered. The preamble to the September 1, 1974 Agreement provides as follows:

"This Agreement shall apply to employees of this Carrier who perform work outlined herein, in the Maintenance of Equipment Department, Newton Rail Mill and Engineering Department under jurisdiction of the Operation Department."

The Organization acknowledges that the work claimed, took place in the Car Department Locker Room. Since the work was not performed in the Departments specifically mentioned in the preamble of the effective Agreement, the work falls outside the scope of the Agreement upon which the instant claim is based. Second Division Awards Nos. 2695 and 2625.

Furthermore, the Carrier had disposed of a claim by the Organization by paying "40 hours * * * at the established rate" to a Sheet Metal Worker because a Carman "allegedly performed sheet metal work between October 17 thru 21, 1966." The documentary evidence concerning this work in 1966 does not disclose that the claim was for "assembling lockers". Moreover, the claim was disposed of "without prejudice to the position of either party". Accordingly, the settlement of this claim does not support the Organization's position in the instant dispute.

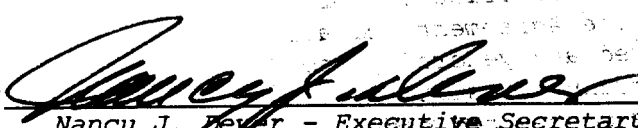
In light of the aforementioned considerations, the instant claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 26th day of February 1986.