

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
(Norfolk and Western Railway Company

Dispute: Claim of Employes:

- 1) That the Carrier violated the current agreement, particularly Rule No. 92, when they improperly assigned other than Sheet Metal Workers (Store House personnel) to the disassembling of sheet metal shelving in the Maintenance of Equipment Shop beginning on June 22, 1982 through August 12, 1982.
- 2) That the Carrier be ordered to additionally compensate Sheet Metal Workers, P. Panashy, H. S. Fink, A. R. Dishner, J. L. Rumberg, C. W. Keaton, K. Hall and E. L. Maynard in the amount of 184 hours to be equally divided among them for this 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 employes or employees involved in this dispute are respectively carrier and employees 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 instant claim alleges that the Carrier violated the Agreement "particularly Rule No. 92", when it improperly assigned Storehouse personnel, rather than Sheet Metal Workers, to perform the disassembling of sheet metal shelving in the Maintenance of Equipment Shop beginning on June 22, 1982 through August 12, 1982. The Carrier's facility involved in this dispute is located at Princeton, West Virginia.

The facts in this case are in dispute. As indicated in the claim submitted by the Organization, beginning on June 22, 1982 through August 12, 1982 the Carrier disassembled sheet metal shelving in the Equipment Shop and reassembled such shelving in another part of the facility. The shelving is used for storing parts and equipment used by the crafts in the repair of the Carrier's roadway and other equipment that is serviced, repaired and overhauled at the Princeton Shop.

In the Carrier's view of the facts, the Material Management Department at the Princeton Shop required that metal shelves in the Roadway Shop be moved to the "A" Building of the Material Management Department. Roadway Shop General Foreman Jones was unable to provide available manpower from the available Sheet Metal Workers to assist in the dismantling and reassembling of the shelving at the new location. All of the Sheet Metal Workers including the Claimants who filed the instant claim were occupied with the repair of roadway equipment except for Sheet Metal Worker Rumberg. Since the Material Management Department needed the shelving moved and reassembled promptly, Storehouse employe Perdue, a member of the Brotherhood of Railway Clerks, along with Rumberg and two (2) other Sheet Metal Workers were used to perform the work at various times over a period of three (3) days. The Storehouse personnel dismantled all but three (3) shelves. At this time the Sheet Metal Workers were assigned to complete the dismantling and two (2) Sheet Metal Workers reassembled the shelving during a three (3) day period. On two (2) other days Rumberg assembled the shelving with the help of Storehouse employe Perdue.

The Board is persuaded by the Carrier's version of the facts which is highly detailed, elaborate and specific. Except for the dates set forth by the Organization, when the work in question took place, the Carrier's view of the facts is unrefuted by the Organization. Reinforcing the conclusion that the Carrier's statement of the facts are credible is the canon of construction that specific terms prevail over general terms.

The Organization relies upon Rule 92 to support its claim that the "disassembling" of sheet metal shelving constitutes work which is within the exclusive domain of Sheet Metal Workers. Rule 92 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 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, babbitting, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steampipes; the operation of babbitt fires, 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."

"NOTE: Dismantling as herein referred to shall apply to all work incident to repairs to locomotives and cars but shall not include destruction of a locomotive or cars for the purpose of scrapping."

The burden of establishing exclusivity lies with the party asserting it. See, for example, Second Division Award Nos. 5740 and 3246. After carefully examining Rule 92, the Board has concluded that the Organization failed to satisfy its burden. The instant claim lacks the support of Rule 92. The only work referred to in the instant claim is the "disassembling of sheet metal shelving". The word "disassembling" is not contained in Rule 92 but the word "dismantling" which is the functional equivalent of "disassembling" is set forth in the Rule. However, the "dismantling" of the sheet metal shelves provided in the instant claim, was not contemplated within the meaning and intent of Rule 92 since it was not "work incident to repairs to locomotives and cars" as stated in the "Note" to the Rule.

If the Organization is claiming that the work in question comes within the scope of the phrase in Rule 92, "all other work generally recognized as Sheet Metal Workers' work, Second Division Award No. 5740 is dispositive of this contention:

"It is firmly established in the case law of this Board that where a Scope Rule of an agreement is general in nature an organization claiming the right to work under the Rule must prove that historically, customarily and traditionally the work has been exclusively performed by employees covered by the agreement on the particular property. The clause: any other system or method used for communication purposes; in Rule 45 is general in nature. Electricians, in the record before us, failed to satisfy the burden of proof."

It should be noted that there is nothing in the record, and neither is it claimed by the Organization that "disassembling sheet metal shelving" has "historically, customarily and traditionally" been exclusively performed by the Sheet Metal Workers at the Princeton Shop.

Yet, to be considered is the contention that the Carriers' submission of prior awards to this Board which have "not been exchanged on the property" and "not made known to the Organization" violates the relevant terms of Circular No. 1. This contention was adequately addressed in Second Division Award No. 4410, where the following was stated:

"A 'Brief' can be defined as a presentation of the authorities both legal and logical to sustain an advocate's position. The logical argument should be confined to the facts in the record which is being examined, and hypothetical examples drawn around those facts. The legal argument should be confined to relevant, and pertinent authority or precedent. All should be drawn together with a view of advising the decisional authority of the advocate's position. There should be no extrinsic evidence presented; it is to be an abstract of the record as already made with the logical conclusion drawn, based upon the authorities cited."

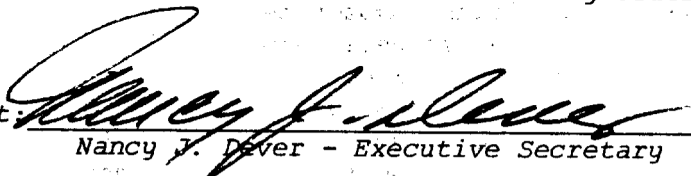
After examining the Carrier's Submission, this Board found that it did not offend the principles contained in its definition. Prior awards are copies of official documents contained in the files of this Division. All members have equal access to these documents (Awards). An adversary relationship between the parties continues when Submissions are submitted to this Board. Consequently, due to the numerous benefits derived by the members and this Board from the submission of prior awards only the clearest terms in Circular No. 1 would preclude such submission as pertinent authority to support the argument of the members. No such terms are contained in Circular No. 1.

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 26th day of February 1986.