

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (Sheet Metal Workers International Association
(Seaboard System Railroad

Parties to Dispute:

1. Carrier violated Rules 30(a) and 87 of controlling Agreement, also other Agreements and Letters of Understanding between Sheet Metal Workers, Maintenance of Way and Carrier, when assigning work within instant claim to Maintenance of Way Employee to perform.

2. Claim being for eight (8) hours at time and one-half rate of pay in behalf of Sheet Metal Worker J. L. Robertson.

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.

Claimant J. L. Robertson is employed as a Sheet Metal Worker by Carrier, Seaboard System Railroad Company, at Nashville, Tennessee. On April 4, 1983, a Maintenance of Way employe was assigned to install an exhaust fan, pipe, and raincap--all made of sixteen (16) gauge sheet metal--in the Division Office Building within the Shop enclosure at the Radnor Shop in Nashville. The Organization filed a claim on the Claimant's behalf, alleging that this work falls within the Scope of the Organization's Classification of Work Rule and that the Claimant was available on April 4, 1983, for overtime after his regular shift.

The Organization contends that the installation of the sixteen (16) gauge sheetmetal exhaust fan within the enclosure of the Radnor Shop falls squarely within the Sheet Metal Workers' Classification of Work Rule 87, which provides:

"Sheetmetal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings, including general office 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, . . . and all other work generally recognized as sheetmetal workers' work."

The Organization claims that the disputed work properly belongs to the Sheet Metal Workers and has been so recognized until this incident. The Organization contends that a series of agreements, understandings, and written statements by Carrier's officials support its assertion that the disputed work properly belongs to the Sheet Metal Workers. These understandings have not been changed subsequently by agreement or otherwise. The Organization further points out that sixty-three of Carrier's employes at Nashville signed statements that establish that the disputed work always has been performed by Sheet Metal Workers at Nashville.

The Organization maintains that the disputed work does not fall within the Scope of Rule 41(a), which provides, "All work in the construction, maintenance, repair or dismantling of bridges, buildings, . . . shall be performed by the bridge and building subdepartment." The Organization asserts that the disputed work involved attaching parts made of 16 gauge sheet metal to a building. Such work is described in the Sheet Metal Workers' Classification of Work Rule, not in Rule 41(a); the work did not involve construction, maintenance, repair or dismantling of buildings.

Finally, the Organization contends that the claim was properly filed on the Claimant's behalf. The Claimant was on duty on April 4, 1983, and was available to perform the disputed work on overtime. The Organization claims compensation on the Claimant's behalf only for the actual time that it took to perform the disputed work. The Organization therefore argues that the claim should be sustained and the Claimant compensated for eight (8) hours at the time and one-half rate of pay.

The Carrier contends that the Organization's Notice of Intent to submit Ex Parte Submission does not meet this Board's requirements for consideration of a dispute; the Notice does not contain a specific statement of the claim, the question for which an award is desired, or the date of occurrence. The Carrier therefore asserts that on this ground alone, the instant claim should be dismissed. The Carrier also contends that the Brotherhood of Maintenance of Way Employes and the Brotherhood Railway Carmen have interests in this claim and that they must be notified of the pendency of the claim with full disclosure of the dispute.

The Carrier asserts that the disputed work is not included in the Organization's Classification of Work Rule, nor is it generally recognized as Sheet Metal Workers' work. The Carrier maintains that the various crafts' Classification of Work Rules often overlap, and each Rule must be read in conjunction with the other Rules; the practice on the property also must be considered in determining if one craft has an exclusive right to perform particular work. The Carrier asserts that the disputed work was carpenter work; it was properly assigned to members of the BMWWE under the craft's Classification of Work Rule. The Carrier also argues that in the absence of B&B employes (BMWWE members), the work could have been assigned to Carmen under that Organization's Classification of Work Rule.

The Carrier asserts that Rule 87 does not include the installation of a purchased vent in its definition of Sheet Metal Workers' work; the installation was not pipe work or tin work simply because the vent was fabricated from sixteen gauge metal. The Carrier argues that where the work does not involve tinning, coppersmithing or pipefitting, as specified in Rule 87, the handling of metal parts, regardless of the gauge, is not reserved to the Sheet Metal Workers by Rule 87.

Further, the Carrier argues that the disputed work never has been generally recognized as Sheet Metal Workers' work. The Carrier maintains that there was no sheet metal work involved in the disputed work assignment. The Carrier asserts that the Organization has not produced any evidence that Sheet Metal Workers ever have installed a vent of any kind. Additionally, the Carrier claims that some performance of a particular type of work by a certain craft does not prove that the craft holds the exclusive right to perform all such work; the Organization has failed to show a system-wide practice of exclusivity.

The Carrier also contends that under the February 14, 1944 Agreement between the Organization and the BMWWE, the BMWWE retained for itself all construction and maintenance of buildings; the Sheet Metal Workers agreed to this. The addition of a metal vent properly belongs to the BMWWE under the terms of this Agreement. Also, the Carrier points out that the disputed work was not performed on a building within the Shop enclosure. The Carrier further argues that even if the disputed work had not been assigned to B&B employes (BMWWE), then the Carrier had no obligation under any agreement to assign the work to Sheet Metal Workers; Carmen also are mechanics and are not prohibited from asserting a claim to the disputed work.

The Carrier also asserts that this Board has recognized that even when work generally is reserved to one craft, such work can be performed by a second craft when it is incidental to the work of that second craft. The Carrier further argues that the record establishes that one (1) hour was the maximum time used in performing the disputed work; the Organization has not refuted this. The Carrier therefore contends that there is no basis for the instant claim for eight (8) hours' pay for an employe who was on duty and receiving pay while the work was being performed. Finally, the Carrier contends that the claim should be denied in its entirety.

This Board has reviewed all of the evidence in this case; and it finds that the Organization's Notice does not meet this Board's requirement, and the matter is properly before this Board for decision.

The Board also finds that the work performed on April 4, 1983, by a Maintenance of Way employe was tinning work thereby belonging to the Sheet Metal Workers. Classification of Work Rule 87 states clearly:

"Sheetmetal workers' work shall consist of tinning, coppersmithing, and pipefitting in shops, yards, buildings, including general office 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 and babbitting; the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes; the operation of babbitt fires, oxyacetylene, thermit and electric welding on work generally recognized as sheetmetal workers' work, and all other work generally recognized as sheetmetal workers' work."

Moreover, this Board finds that the assignment of work in question is also governed by the letter dated April 10, 1945, that is in evidence, and which states:

"We did agree, however, due to the fact that on most roads, the sheet metal workers do perform the tinnners' work on buildings within the shop enclosure and the fact that that was the former practice here on the L&N that the tinnners' work within the shop enclosure properly belongs to the sheet metal workers"

Moreover, there is another letter in evidence dated December 6, 1944, which states, in part:

"The Director of Personnel handled this matter with General Chairman George E. Davis of the Brotherhood of Maintenance of Way Employes, and Mr. Davis in replying to him Sept. 29, 1943, referred to the dispute between the Sheet Metal Workers and Maintenance of Way Employes concerning jurisdiction of both of these Organizations, stated it was agreed that tinnners' work within shop enclosures properly belonged to Sheet Metal Workers, but that tinnners' work on all buildings other than within the shop enclosures belonged to the B&B Department employes, except on certain work performed by pump repair men and their helpers, and full-time tinnners and helpers."

Since there is ample evidence that the tinning work at issue was performed within the shop enclosure, this Board finds that the applicable Rules and Agreements require that the work should have been assigned to the Sheet Metal Workers' craft. It is certainly not the type of work that fits into any of the explicit exceptions to the rules.

Finally, the Organization has presented signatures of sixty-three employes of the Carrier, most of whom were not Sheet Metal Workers and who are part of the Machinists, Electricians, and Boilermakers' craft and can, therefore, hardly be discounted as self-serving, which stated clearly that all sheet metal work fourteen gauge and lighter in and around the Shop area, including office buildings, has always been performed by the Sheet Metal Workers at Nashville, Tennessee. The Carrier has not presented any evidence to rebut that assertion.

The Claimant, a Sheet Metal Worker, was on-duty on the date in question and was available to perform the work. Hence, he deserves to be paid.

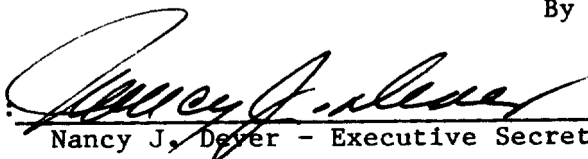
Finally, although the claim seeks eight hours' pay at time and one-half, there is no evidence in the record that the particular assignment took that long. The Carrier has presented evidence that the work in question took a maximum of four hours. The Organization has not offered any rebuttal to this. Hence, this Board finds that the Claimant is entitled to four hour's pay at the time and one-half rate.

A W A R D

Claim sustained in part. The Claimant is awarded payment of four hours' pay at the time and one-half rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1986.