

The Second Division consisted of the regular members and in addition Referee Steven Briggs 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 Memorandum "A" and the Memorandum of Agreement between the Machinists and the Sheet Metal Workers dated July 16, 1956, of the current Motive Power and Car Department Agreement.

2. That claimant Sheet Metal Worker J. M. Poland be compensated by the Carrier for 2 hours pay at straight time rate, and in addition that the Carrier pay 10% interest per annum compounded annually on anniversary date of claim.

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 March 1, 1982, the Carrier assigned an employee of the Machinist Craft to take water samples on diesel-electric locomotive units 1192, 3858, 1525, 1528, 1529, 1510, 1526, 1504, 1505, 1527 and 2279. The Claim was presented on behalf of J. M. Poland, a Sheet Metal Worker, who argues that such work properly belongs within his craft.

The Organization believes the Carrier violated Memorandum A of the July 16, 1956, Memorandum of Agreement between the Machinists and Sheet Metal Workers, quoted in pertinent part below:

"Memorandum of Agreement - Southern Pacific Company
(P.L.) - Jurisdiction of Work - Machinists vs.
Sheet Metal Workers - It is agreed and understood
between the parties signatory hereto, all changing
of oil on all diesel locomotives will be performed

by the Machinists' craft. When necessary to couple or uncouple pipes or hoses in connection therewith, the coupling or uncoupling of such hoses or pipes shall be done by the Sheet Metal Workers' Craft.

It is also agreed that breaking the seal and resealing shut-off valve in drain pipe, together with removing and replacing pipe plug in same, is sheet metal workers work. The opening and closing of shut-off valves in connection with oil changing, and the operation of any pumps in connection therewith, is machinists' work.

It is further agreed that the mixing and application of any and all treatment to water cooling systems (such as rust inhibitors and other such treatment) used on all diesel electric locomotives is sheet metal workers work. This is to include taking water samples.

This understanding is intended only to settle jurisdictional disputes between the two organizations, parties to this agreement, to remain in effect until changed by mutual agreement, and is not to be construed as affecting the rights or jurisdiction of any other craft".

The Organization also maintains that the Carrier violated Memorandum A of the current Agreement, quoted below:

"Memorandum A - Memorandum of Agreement - In connection with and supplementary to the Motive Power and Car Department Agreement which became effective April 16, 1942, it is recognized by the employees represented by System Federation No. 114, through their several General Chairman and the Southern Pacific Company (Pacific Lines), that in and by said agreement, numerous changes have been made in the 'Classification of Work' and other rules under which men have heretofore been working, and a great deal of detail and description of the work has been eliminated, which may result in one craft or class requesting or contending for work that is being performed by another craft or class.

In recognition of the facts above recited, and in order to avoid confusion and provide an orderly determination of the items of work not specifically stated in the 'Classification of Work' and other

Rules of the several crafts, it is agreed that existing practices will be continued, unless and until otherwise decided by conference and negotiation between the General Chairman involved, and the General Superintendent of Motive Power, for purpose of uniformly applying such decision whenever necessary on the railroad.

It is also agreed that the work specified and referred to in said Agreement means only such work as comes under the jurisdiction of the General Superintendent of Motive Power. . . . "

The Organization also argues that the above language is clear and unambiguous. Accordingly, it speaks for itself and any past practice cited by the Carrier should not be considered.

The Carrier argues that the Organization appealed to the Board before a conference was held on the property and, thus, the Claim is procedurally defective. It also argues that the interest of a third party, the International Association of Machinists and Aerospace Workers, should be permitted to be heard. With regard to the merits, the Carrier maintains that since execution of the 1956 Memorandum of Agreement the Machinists have taken water samples from diesel electric locomotives at various service locations in the train yard without complaint from either union. This practice reflects the parties' intent when they constructed the Memorandum of Agreement.

With regard to the Carrier's argument that a conference was not held on the property before the Claim was appealed to this Board, we note that the conference was held on December 20, 1982, and that appeal to this Board was made by letter of the same date. Even though the Carrier did not mail its written confirmation that the Claim was denied until December 23, 1982, this Board concludes that the actual date of denial was indeed December 20. Accordingly, we find no procedural flaw in its processing.

With regard to the merits, we find that Memorandum A of the Agreement is not clear and unambiguous. Rather, it is subject to more than one reasonable interpretation. The Memorandum speaks of a mutual recognition that work will be assigned on the basis of "existing practice," but does not describe such practice or specify types of work. It is therefore appropriate for this Board to consider arguments relating to past practice an attempt to determine the parties' intent.

Moreover, it is incumbent upon the Organization to meet its burden of proof in this matter. We find that such burden has not been met. First, the language of Memorandum A (1942) does not clearly support the Claim. It contains no specific language covering the taking of water samples. Second, the Organization did not convincingly refute the Carrier's past practice argument that Machinists have done such work historically. We note that such practice was also confirmed by the Machinists' third party submission.

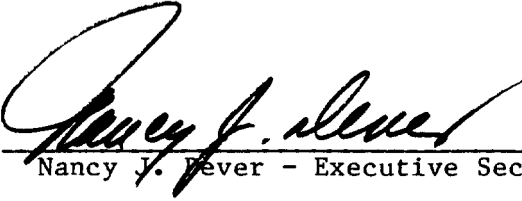
Finally, nothing in this record has persuaded the Board that the 1956 Memorandum of Agreement between the two crafts involved is binding upon the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.