

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Sheet Metal Workers' International Association
Parties to Dispute: (
(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 B&B employes the task of assembling lockers at Hobart Yard, Engineer's locker room, on June 3, 4, 5 and 8, 1981, Los Angeles, California.

2) That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Sheet Metal Worker Joe Martinez in the amount of four (4) days, eight hours (8') per day, June 3-4-5-8, 1981, account B&B Department employes performing his work.

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 3, 4, 5 and 8, 1981 (according to Organization's version of the facts in the instant case) or June 12, 15 and 17, 1981 (according to Carrier's version of the facts), five (5) B&B Department employees, who are members of the Brotherhood of Maintenance of Way Employees, assembled sheet metal lockers for use by engineers in the Engineers' and Trainman's Locker Room at Carrier's Hobart Yard, Los Angeles, California. Said task, according to Organization, encompassed thirty-two (32) hours. Carrier asserts, however, that forty (40) lockers were assembled in thirty-one (31) hours.

On July 7, 1981, Organization filed a Claim alleging that the foregoing assignment was a violation of Rule 82 of the parties' controlling Agreement and further alleging that the disputed work rightfully belonged to Claimant who was a "Grand Division Sheet Metal Worker."

Rule 82 of the controlling Agreement, in pertinent part, 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---all other work recognized as sheet metal workers work."

According to the Rules of the National Railroad Adjustment Board, because of the nature of the dispute, the Brotherhood of Maintenance of Way Employees, a Third Party herein, was notified of the pendency of the dispute. However, the Maintenance of Way Employees declined to intervene.

Organization's basic position in this controversy is that Sheet Metal Workers have historically assembled lockers on this property. Additionally, Organization cites a litany of Second Division Awards which, according to Organization, recognizes its members' right to perform the type of work which is contested in the instant dispute. Specifically, Organization cites Second Division Award No. 8004 which allegedly limits the exclusivity of work doctrine to a particular point rather than systemwide exclusivity. As further evidence of the Sheet Metal Workers' exclusive right to perform the work in dispute herein, Organization proffers an affidavit signed by various of its members at Hobart Yard who indicate that they have previously performed this very same work on this very same property.

Carrier challenges Organization's Claim on numerous fronts.

First, Carrier argues that the Preamble to the parties' controlling Agreement limits the jurisdiction of the Sheet Metal Workers' Classification of Work Rule to the Maintenance of Equipment Department and the Engineering Department under the direction of the Operating Department. Furthermore, according to the Carrier, said Preamble, does not specifically enumerate work of the nature involved herein as being the exclusive jurisdiction of employees within Claimant's job classification. Further on this same point, Carrier contends that this Board, in Second Division Award No. 2695, has previously denied a smaller claim between these same parties. Said Award, according to Carrier, is res judicata and clearly establishes that the disputed work "... does not contractually belong to Sheet Metal Workers."

Regarding Organization's reliance upon Second Division Award No. 8004, allegedly establishing the point exclusivity doctrine, Carrier argues that said Award must be viewed as an aberration in light of the many other Second Division Awards which support systemwide exclusivity. According to Carrier, since Organization is the moving party in the instant dispute, and,

therefore, must prove systemwide exclusivity, Carrier proffers its own survey which allegedly demonstrates that many other employees of many other crafts have assembled sheet metal lockers at many other points throughout Carrier's system. Therefore, Carrier distinguishes Organization's contention of the precedential value of Award No. 8004, which purportedly recognizes the Sheet Metal Workers' right to assemble Mechanical Department lockers, by arguing that the lockers involved in this dispute, unlike those involved in the cited Award, are used by employees of the Operating Department.

Lastly, Carrier contends that the instant dispute contains a factual discrepancy concerning the dates and number of hours involved in the alleged violation; and also that, throughout the time period involved in the Claim, Claimant was gainfully employed on the Claim dates, and, consequently, suffered no economic harm. For these latter reasons alone, Carrier argues that the instant Claim should be dismissed as being procedurally defective.

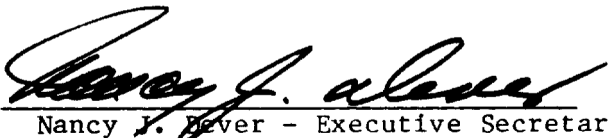
The Board has carefully read, studied and considered the complete record in this case, and concludes that we cannot resolve the factual discrepancies which have been adduced by Carrier in its argumentation. When confronted on the property with the factual differences regarding both the dates and the duration of the alleged infractions, Organization apparently failed to clarify whether the alleged violation occurred on June 3, 4, 5, and 8, 1981, for thirty-two (32) hours; or on June 12, 15 and 17 for thirty-one (31) hours. As a consequence, this Board is faced with the dilemma that even if we would find for Organization's position in this dispute, we, nonetheless, would be unable to fashion a precise remedy. Therefore, since this Board had consistently declined to resolve factual differences left unresolved on the property, the instant Claim must be disposed of in a similar manner.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April 1987.