

The Second Division consisted of the regular members and in addition Referee T. Page Sharp 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 Rules 33 and 77 of the current controlling Motive Power and Car Department Agreement.
2. That employees of the Maintenance of Way Department were wrongfully assigned to perform work which has historically been assigned to employees of the Sheet Metal Workers Craft working in the Shop Maintenance Gang.
3. That claimants F. Sanders, R. Flores, J. Toney, J. Lee, J. McLucas, E. Galli, F. Mayberry, M. Mitts, J. DeFrisco and C. Davies be compensated by the Carrier for 280 hours each at their straight time rates and for 56 hours each at their overtime rates of pay.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee 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 Carrier constructed a new facility, a painting facility for diesel locomotives, at the Sacramento Locomotive Works. The facility was approximately one hundred and fifty yards long and was divided into four areas; a prep area, a blast area, a paint and detail area, and an office area.

Certain installation and assembly functions were assigned to Carrier's Maintenance of Way forces. Some of this work consisted of the installation of water lines throughout the building, specifically the installation of pipes for conveying compressed air between five air compressors located in the building and storage tanks located outside the building.

As third party in interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this case, and filed a Submission.

The present Claim is for the work done by the Maintenance of Way forces. The alleged contractual violation is of Rules 33 and 77. These Rules read:

"ASSIGNMENT OF WORK

Rule 33 (a) None but mechanics or apprentices classified as such, shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed. This rule does not prohibit foremen, in the exercise of their supervisory duties, from performing mechanics' work.

RULE 77

CLASSIFICATIONS OF WORK

Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards and buildings (except work performed by Maintenance of Way Department employes) and on passenger train cars 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 babbiting, the bending, fitting, cutting, threading, grazing, connecting and disconnecting of air, water, gas, oil and steam pipes; operating punch presses and power brake machines, the operation of babbitt fires; oxyacetylene, thermit and electrical welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work. Shipyard sheet metal workers' work."

On the property a procedural violation was alleged. The Organization claimed that the time limits of the appropriate Rule had been violated because the Carrier had answered on the sixty first day, a period that counted the day of the service of the Claim. While there is much arbitral authority on the subject, this Board cannot consider them. It has long been held that a Claim must specifically state violations of specific Rules. The Claim here does not refer to the alleged violation, thus it cannot be addressed.

The Carrier addressed the Claim by responding in a letter of May 18, 1984, stating in pertinent part:

"Investigation does not substantiate your claim. Maintenance of Way has the responsibility to pipe from the source of air and water to the service valve. Shop crafts have the responsibility from the service valve only. Valves which you refer to as service valves are actually balancing valves. These valves were installed to balance the flow of air and water and to enable isolation of a compressor without affecting the complex as a whole."

This explanation was met by a communication from the Local Chairman stating that the contention was in error.

Numerous settlements of Claims were put in the record and said to be determinative of the jurisdictional issue. This Board rejects this supposition. If Boards were to utilize settlements to determine present controversies, the settlement process would be irrevocably dampened.

Several affidavits, all reading basically alike, were submitted from long-time Sheet Metal Workers. These say:

"I have been employed by the Southern Pacific Railroad as a Sheet Metal Worker at the Sacramento Shop (Sacramento Locomotive Works) for ___ years. During this period of time I have been assigned to the Shop Maintenance Gang commonly referred to as the 'Repair Gang', for ___ years. Many times as part of my assigned duties, I have performed all pipe work connected to the Air Compressors located at the Steam Plant Building, at the Air Room (Air Brake Shop) and at the former Car Shop #9 Area."

We interpret these to mean that the individual is not claiming he performed all pipe work, meaning total, because all of these affidavits say the same. The only logical meaning is that the individual has performed all types of pipe work at the points mentioned. We do not find these affidavits determinative as described below.

Although some Awards have found that Rule 77 explicitly gives the pipe work to the Sheet Metal Worker, we do not so read the Rule. The first part of sentence one creates some ambiguity when it states "Sheet metal workers' work shall consist of . . . pipefitting in shops, yards and buildings (except work performed by Maintenance of Way Department employes) . . ." The Rule encompasses the seeds of disputes between these two crafts.

Because of the possibility of overlap of work, many Awards have held that for either craft to claim absolute right to the work, it must prove exclusivity. The conflicting statements as to the nature of the valves do not resolve the matter for us. Neither do the statements from the employees stating that they have done the work. No contention is made from the statements that the Sheet Metal Workers had exclusively performed the work.

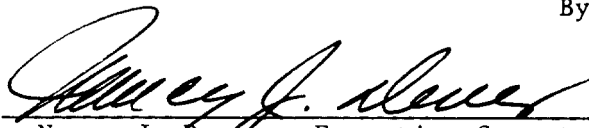
The burden of proof on the party alleging a Rule violation rests solely with that party. The proof must be presented to the Board in a clear, concise manner that will allow us to make a reasoned judgment. This is especially true in cases as this where the evidence concerns technical matters whereby slight differences can delineate jurisdictional work lines. The proof has not been presented to us in such a manner, thus we are unable to make the reasoned judgment for which we are empaneled. We find that the Organization has not met its burden of proof.

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 1st day of July 1987.