

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

(Burlington Northern Railroad Company

PARTIES TO DISPUTE: (

(Sheet Metal Workers International Association

STATEMENT OF CLAIM: Claim of the Burlington Northern Railroad Company:

(1) That in the temporary absence of one sheet metal worker on vacation and one sheet metal worker on sick leave, leaving no sheet metal workers assigned on the shifts to which those employees were ordinarily assigned at Tulsa, certain tasks involved in the connecting and disconnecting of locomotive consists, which are unskilled and do not fall within the classification of work rule of sheet metal workers, were assigned to employees of other crafts.

(2) That this action does not constitute a violation of any rule or agreement between the Burlington Northern Railroad and the Sheet Metal Workers International Association.

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 were given due notice of hearing thereon.

As Third Party in Interest, the International Association of Machinists and Aerospace Workers was advised of this dispute and filed a Submission.

On May 28, 1986, one sheet metal worker employed as a pipefitter at Carrier's Tulsa, Oklahoma, facility began his vacation. On May 29, 1986, a second pipefitter, working on the same shift at Tulsa, was injured and went on a leave of absence. Carrier and the Organization agreed that because these temporary absences left no pipefitters assigned to one of the shifts at Tulsa, Carrier would blank the pipefitter positions on this shift and defer all exclusive pipefitter work to the following shift, when a pipefitter was available. On May 30, 1986, Carrier assigned work involving the connecting and disconnecting of air hoses and electrical cables to other employees working on the

blanked shift. The Organization disputed this work assignment, asserting that the work at issue belonged exclusively to sheet metal workers. Carrier subsequently filed a claim, contending that this assignment of work did not violate the parties' Controlling Agreement.

This Board has reviewed the extensive record in this case, and we find that the action of the Carrier did not constitute a violation of any rule or agreement between the parties. Therefore, the claim by the Carrier must be sustained.

In cases of this kind, where the Organization is contending that work was improperly assigned, the Organization bears the burden to show that the work in question exclusively belongs to its members. This Board has held on numerous occasions in the past that unless an Organization can point to specific language in the contract or that the work has been performed by members of that Organization on an exclusive system-wide basis, the Carrier has some flexibility in the assignment of the work.

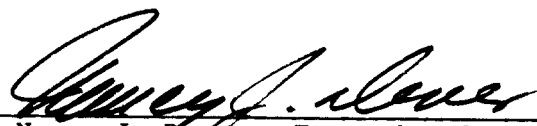
In the case at issue, the Carrier has shown that the work of adding and/or cutting locomotives is performed by other crafts at Tulsa, as well as many other locations throughout the system. Therefore, this Board must find that the Carrier did nothing wrong in its assignment of work giving rise to this dispute.

A W A R D

Claim of the Carrier is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of August 1988.

LABOR MEMBERS' DISSENT TO
AWARD 11535, DOCKET NO. 11287-T
Referee Peter R. Meyers

Initially the Board has failed to uphold the provisions of the controlling agreement regarding the procedure the Carrier failed to adhere to when progressing the dispute to the Division. The fact that no correspondence had been exchanged between the parties on the property failed to allow the Organization to prepare the proper defense to the Carrier's allegations. The dispute should have rightfully been remanded to the property for further handling.

While denying the right of the Organization to perform work properly reserved to them both through agreement and past practice, the Board has chosen to override the past history and practices of the Division.

The Organization more than adequately set forth documentation the work involved in the dispute was recognized as Sheet Metal Workers' work on the predecessor road. The fact remains that on every point on the Carrier's property at which Sheet Metal Workers are employed, the work involved is recognized as belonging to this Organization. Had the dispute been properly progressed on the property, the Organization would also have had the opportunity to provide the Carrier with additional documentation proving that the work is recognized as belonging to the Organization on the Carrier's entire property. This property consists of many predecessor carriers.

The Board has chosen to disregard the provisions of the Agreement, prior practices in effect on the predecessor carrier with regard to exclusivity, and has failed to take into account the well being of both the employees and the carrier when sustaining the claim. We must most aggressively register this dissenting opinion.

B. T. Proffitt

B. T. Proffitt

R. A. Johnson

R. A. Johnson

D. A. Hampton

D. A. Hampton

R. E. Kowalski

R. E. Kowalski

M. Filipovic

M. Filipovic

CARRIER MEMBERS' RESPONSE
TO
LABOR MEMBERS' DISSENT
TO
AWARD 11535 (DOCKET 11287-T)
REFEREE MEYERS

The Organization has engaged in self-delusion in its Dissent.

According to the Permanent Injunction issued against the Organization, the following statement of fact is found:

"The SMWIA felt that this assignment of work to other crafts was improper and in violation of Rule 94 of the applicable collective bargaining agreement, the Frisco Agreement. Shortly thereafter, the SMWIA began contacting its local unions in order to give them strike instructions." (Emphasis added)

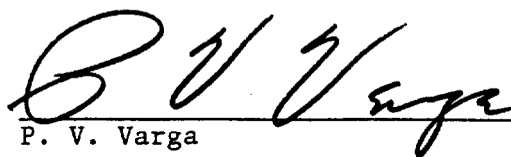
Further, concerning the alleged lack of time to "prepare the proper defense" this was the same excuse offered to the Court and dealt with as follows:

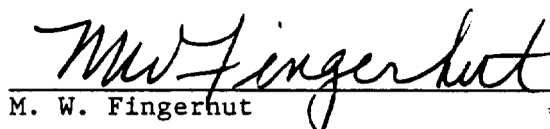
"The basis for the SMWIA's objection is the possibility that some evidence might not be available due to shortness of time. However, the parties had almost one week to prepare on an expedited basis for the preliminary injunction hearing. The resolution of this issue hinges upon whether BN's actions reflect a material change of the applicable collective bargaining agreement or merely an arguable interpretation of the agreement. In light of this limited issue....the Court finds that no new evidence could be produced to aid it in resolving the action."


Finally, the Organization, in its Submission to this Board, and in its response to the Third Party (IAM), had ample opportunity to substantiate that the work was "recognized as belonging to the Organization on the Carrier's entire property." To now assert that it was unable to make its case is ludicrous at best.

One who brings misfortune upon himself, cannot thereafter assert that it wasn't his fault.

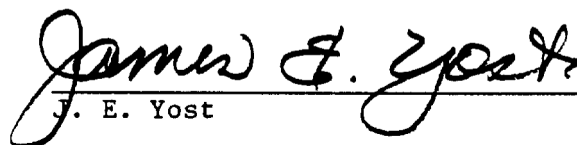
CARRIER MEMBERS' RESPONSE TO
LABOR MEMBERS' DISSENT TO
AWARD 11535 (DOCKET 11287-T)


P. V. Varga


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


J. E. Yost