

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11925
Docket No. 11637-T
90-2-88-2-125

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. The Carrier violated the provisions of the current controlling agreement, Rule 71 in particular, when they improperly assigned other than a Sheet Metal Worker to clean and repair sanders on Burlington Northern Locomotive 5371, in consist for Train 84RR026, located in the East Yards, Number 2 Track, at Alliance, Nebraska on July 14, 1987.

2. That accordingly, the Carrier be required to compensate Sheet Metal Worker D. O'Connor in the amount of eight (8) hours pay at the rate of time and one-half the prevailing rate of pay for the above-stated date.

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.

In this dispute, the Organization contends that Carrier violated the Classification of Work Rule (Rule 71) when a machinist assertedly cleaned the sanding units on Burlington Northern Locomotive 5371 on July 14, 1987. Said Rule reads 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 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, sand and steampipes; the operation of babbit fires; oxyacetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work."

Specifically, the Organization maintains that the connecting and disconnecting of sand pipes is indisputably Agreement specified protected work and thus all pipe work involving the cleaning of sanders is reserved exclusively to Sheet Metal Workers. It pointed out that the cleaning of sanders was not akin to the simple task of cleaning an automobile or the scrubbing of a sink, but rather necessitated the utilization of technical skills. As an illustration, it observed that in order to reach the location where the sand trap unit developed an obstruction, the pipefitter (Sheet Metal Worker) was required to remove the sand pipe from the sand outlet side of the trap and dislodge the residual harden dust sand particles. It submitted a copy of Carrier's maintenance instructions for the cleaning and maintenance of locomotive sanding systems and a 1946 Jurisdictional Agreement involving the allocation of specialized work tasks on the former Chicago, Burlington and Quincy Railroad. In part, that Agreement stated:

"All pipe work in connection with any of the above parts of the locomotive and the cleaning of sanders, as well as the right to test all air brake pipes for leaks in order to determine that repairs are properly made is sheet metal workers' work."

It also cited Award 3 of Public Law Board No. 3501 and Second Division Awards 8152 and 7368 as further support for its position. The Machinist Organization as a prospective party in interest did not file an ex parte rebuttal submission, but submitted a letter to the Division on December 23, 1988, wherein it indicated that it had no response to the dispute, but noted that its position was not a disclaimer of the work in dispute.

The Carrier argues that the work did not involve the cleaning or repairing of sand traps or sand pipes but rather was a minor function incidental to the primary duties of a machinist. It asserted that the unplugging of the sanders on the claim date merely involved the use of a hammer or wrench to tap the sanding mechanism or the insertion of a wire or screwdriver into the pipe to remove sand accumulation. Furthermore, it contended that the Organization had not established that any pipes were removed or that it was

necessary to first remove a pipe before inserting a wire to unplug the sand. It maintained that the work was of a minor and incidental nature and did not require the skills ordinarily used in repairing sanders. It cited Second Division Award 4219 involving the Elgin, Joliet and Eastern Railway Company and the Sheet Metal Workers Union as controlling authority. In pertinent part this Award held:

"... that while the instant dispute was being progressed on the property the organization claimed repeatedly that 'CLEANING' sandpipes was exclusively pipefitter's work. To this the carrier could not and did not agree for it knew full well that throughout its system sandpipe cleaning properly has been performed by engineers, firemen, machinist inspectors and machinists in and around roundhouse facilities, in the yards, and on line of road for many many years without any objection from the organization or the employees it represents - or anyone else. The carrier knew, too, that cleaning a sandpipe might require only the slightest tap with a hammer or monkey wrench (standard equipment on locomotives and used traditionally by enginemen when faced with a sluggish sandpipe) to get the sandpipe running smoothly again. The carrier was also aware that a short length of wire run smartly into a sandpipe filled with damp sand, by an engineer, fireman, machinist, etc., will usually clean the situation up in a very short time. Occasionally, in wet freezing weather, a lighted fusee or flaming wiping cloth strategically placed by an engineer or fireman will clean out that ice or frost and allow sand to flow freely. No, the carrier couldn't agree that clearing sandpipes was exclusively pipefitters' work simply because too many other crafts or classes of employees on this property have historically and traditionally considered this an incidental and integral part of their normal duties and have performed it without requirement, without question, without objection and without delay. For this reason the carrier declined the organization's claim for 'CLEANING' sandpipes - and rightfully so.

* * * *

It is obvious that there must be considerable cleaning of sand pipes at the Carrier's four facilities mentioned above; and it is equally obvious that the cleaning of sand pipes is being done by other than Pipefitters at these facilities. How then can it be claimed that this work is reserved solely to Pipefitters?"

In considering this case, the Board concurs with Carrier's position. The Claim filed by the Organization on August 19, 1987, charged that Carrier assigned a machinist to repair the sanding system on BN Locomotive 5371 on July 14, 1987, but no detail confirmatory information was actually provided as to the actual work performed. If the work performed involved merely the tapping of the pipe or the insertion of a wire to dislodge the accumulated sand, then said work under the precedent authority of Second Division Award 4219 would be momentarily incidental to the primary work of the machinist.

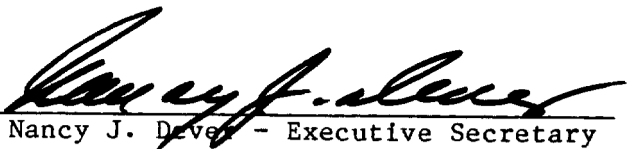
On the other hand, if the work involved more than mere tapping or the insertion of a probe and reflected the cleaning of sanders then said work belongs to the Sheet Metal Craft. Admittedly, this is a fine distinction and requires under varying disputable circumstances a painstaking analysis of events, but in reality it comports with the authorities cited by both parties.

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 22nd day of August 1990.

LABOR MEMBERS' DISSENT
TO
AWARD 11925, DOCKET 11637-T

The findings of the majority of the Board in this dispute are most grievously in error. The findings have not only rejected the accepted past practice on the property, but in addition have totally ignored and forever damaged the intent and application of the literal contractual language contained in the Organization's Classification of Work Rule.

The dispute involved the cleaning of locomotive sanding systems in the Maintenance of Equipment Department by other than employees represented by the Sheet Metal Workers' International Association.

While refusing to properly sustain the claim, the Honorable Referee states: .

If the work performed involved merely the tapping of the pipe or the insertion of a wire to dislodge the accumulated sand, then said work under the precedent authority of Second Division Award 4219 would be momentarily incidental to the primary work of the machinist.
(Emphasis added)

In review of the above-referenced Award, two (2) specific oversights committed by the neutral require further discussion.

Initially, it is set forth that Award 4219 was rendered effective June 14, 1963. The acceptance of this Award as precedent entirely disregards the provisions of Article 5, Incidental Work Rule, of this Organization's Agreement of May 12, 1972 which

provides for the performance of incidental work on this Carrier's property. The utilization of employees not represented by this Organization to perform work guaranteed to its members through past practice and literal contractual language may be accomplished only under provisions mandated in Article 5. The Referee's acceptance of Award 4219 as being precedent are unfounded and rendered moot by the subsequent May 12, 1972 Agreement.

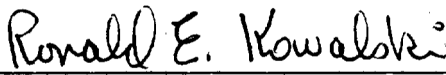
Furthermore, the Carrier did not rely on the provisions of Article 5 in denying the instant dispute. Instead, they chose to transfer the disputed work away from the Organization by clouding the tasks required in the actual cleaning of sanding systems.


Secondly, Award 4219 makes reference to the practice of various carrier employees at various points as performing the work involved in that dispute on a regular basis. As set forth in the instant dispute, all shops on the Carrier's predecessor system assigned sheet metal workers to perform the work in question. (Employee's submission, Exhibit "F", Pages 13 through 17) This fact combined with the jurisdictional agreement of November 19, 1946, Docket 262, Award 262 (Employee's submission Exhibit "F", Page 12) unequivocally grants the disputed work to the members of this Organization.

The majority's refusal to accept the facts set forth by the Organization regarding prior systemwide practice and the exclusive contractual language contained in the agreement provisions renders

this Award erroneous and accordingly, does not set precedent.
Most vigorously dissent to Award 11925 and the findings contained
therein.


Labor Member


Labor Member


Labor Member


Labor Member

Labor Member

Labor Member

