

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11970
Docket No. 11693
90-2-88-2-192

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
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

That this Organization received formal ninety (90) day notice of transfer of work and force changes, dated December 13, 1985, under the provisions of Article I, Section 4 of Agreement dated September 25, 1964 which would result in a change in operations involving the transfer of certain locomotive maintenance, repair and inspection work then being handled at Houston, Texas-Settegast Shop to Fort Worth, Texas with conference to be held with the Union Pacific Railroad Company, hereafter referred to as the Carrier, January 30, 1986 at St. Louis, Missouri.

Subsequently, as a result of conference held date of March 11, 1986, at North Little Rock, Arkansas, it was the position of the Sheet Metal Workers' International Association that sufficient work would remain at Houston, Texas to justify retention of Sheet Metal Workers to perform work contractually assigned to their craft as set forth in letter dated March 12, 1986 and signed by General Chairman Paul Davidson. As a result, an agreement was reached by letter dated March 27, 1986 to retain a Sheet Metal Worker position, on a temporary basis for the purposes of a joint time check and that the employee assigned, to temporary position, to be considered for benefits he would normally have received when jobs were abolished March 28, 1985. This resulted in the recall of furloughed Sheet Metal Worker Kerry Drake, hereafter referred to as claimant, by letter dated April 24, 1986. Date of joint check was agreed upon by letters dated April 28, May 13 & May 15, 1986 with joint check to commence May 27, 1986. On June 4, 1986 Carrier bulletin No. 2-86 was posted discontinuing Sheet Metal Worker Position 1, which was at that time, held by claimant and resulted in his furlough from the Carrier's service.

Consequently, claim was filed in claimant's behalf dated July 1, 1986 with statement by General Chairman Paul Davidson concerning the joint check attached.

RELIEF REQUESTED:

That the Union Pacific Railroad Company be required to provide the claimant, Kerry Drake, the protective benefits of the controlling agreements that are applicable as set forth in claim dated July 1, 1986, change in the Carrier's operation.

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 basic facts in this case are set forth as follows: Following Carrier's action to transfer certain locomotive maintenance, repair and inspection work from Houston to Ft. Worth, Texas, which involved the abolishment of nine (9) Sheet Metal Workers positions at the Houston, Texas, Settegast Shop, the parties agreed to conduct a joint check of operations at the Houston situs to determine whether there was sufficient remaining work to justify retention of Sheet Metal Worker(s). The joint check was conducted on May 27, 28, and 29, 1986, and pivoted around the work activities performed by Claimant who was recalled from furloughed status. Later by letter dated July 1, 1986, and which served as a claim notice, the Organization apprised Carrier that it was displeased with the way Carrier conducted the joint check, specifically charging that Carrier's demeanor was unreflective of a fair and impartial check. It submitted a single spaced four (4) part statement, wherein it detailed its version of what actually occurred during the three (3) day check. This version, at least from the Organization's perspective, justified retention of a Sheet Metal Worker at Houston.

By letter dated August 28, 1986, Carrier disputed the contentions, responsively asserting that the actual amount of time expended in sheet metal work on the joint check days was 17.4 percent of the total time worked by Claimant. Consequently, it maintained there was not sufficient work at the Houston situs to justify employing a Sheet Metal Worker. It also submitted a detailed single spaced three (3) page statement setting forth its version of the joint check.

In considering this case, the Board must concur with Carrier's position. Based on our careful painstaking analysis of the parties detailed versions of what actually occurred on the joint check days, we cannot conclude that sufficient Sheet Metal Workers work remained at the Houston situs. There are several conflicting observations that relate to incidental work questions and factual differences regarding the substance of work performed and the duration of performance. On its face, and by itself, the Organization's statement appears defensible, but Carrier's version is also persuasive. In the absence of compelling proof, we have no plausible basis for sustaining the Claim.

Form 1
Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1990.