

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup 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 when they improperly assigned other than Sheet Metal Workers, to the work of assembling 16 and 18 gauge sheet metal racks on October 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, and November 3, 1986, in the Store Department of the Havre Diesel Shop, on the Carrier's property in Havre, Montana.

2. That accordingly, the Carrier be required to compensate Sheet Metal Workers T. Pappas, A. Kaluza, M. Jennings, D. Haas, W. Jasinski, J. Judd, L. Jasinski, F. Christian, R. Kohlman, K. Doke, A. Hanson, R. Crocker, R. Williams and C. Widdekind, in the amount of 27.4 hours pay each, at the current prevailing rate 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.

This claim was filed because the Carrier assigned Bridge and Building Department employees of the Maintenance of Way craft, to dismantle and re-assemble metal shelving racks attached to walls and floors in the Material Department at Havre, Montana. This work was part of a remodeling project.

The Organization alleges that the work in question was reserved exclusively to their craft under Rule 71 - Classification of Work. This Rule reads:

"Rule 71. CLASSIFICATION OF WORK

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 steam pipes; the operation of babbitt fires; oxy-acetylene, thermit and electric welding on work generally recognized as sheetmetal workers' work, and all other work generally recognized as sheet metal workers' work."

The Organization also alleges that its craft had performed this work as a matter of past practice. To support this contention a number of statements from various Local Chairmen are part of the record.

In denying the claim, the Carrier states that the aggrieved work was not reserved to Sheet Metal Workers per Rule 71 since this Rule does not specify this craft's right to disassemble and assemble metal shelving. Maintenance of Way Rule 55 is also cited by the Carrier in support of its position that neither the Organization's Rule 71 nor the B & B Rule 55 exclusively protects the work in question for either party. This latter Rule reads:

"Rule 55 (F.) First Class Carpenter.

An employee assigned to construction, repair, maintenance or dismantling of buildings or bridges, including the building of concrete forms, erecting false work, etc. He shall be a skilled mechanic in house and bridge work, shall have a proper kit of carpenter tools sufficient to carry out the work employed upon, except such tools as are customarily furnished by the Company."

The Carrier also argues that Sheet Metal Workers have done this work but not exclusively as a matter of practice. Numerous crafts had done this kind of work throughout the system. This included Clerks, Laborers, B & B, Sheet Metal Workers and "whoever was available." The Carrier also offered a number of statements from B & B employees and a B & B foreman for the record. These statements assert that B & B employees had performed work of the type in question as a matter of past practice at Havre, Montana.

Absent resolution of this claim on the property it was docketed before this Board for final adjudication. The Board advised the Brotherhood of Maintenance of Way Employees of its right to submit a Third-Party Submission in accordance with Section 3, First (j) of the Railway Labor Act. A Third-Party Submission was forwarded to the Board and the Sheet Metal Workers' filed a Rebuttal Submission.

After reviewing the record the Board concludes that the Organization's Classification of Work Rule 71 does not specifically assign the work in question to Sheet Metal Workers although it would not be inappropriate for this craft to be assigned such work under the same Rule.

Absent Agreement support for the Organization's claim it must show by system-wide practice that the work in question belongs to the members of its craft "historically, traditionally, and customarily." (Second Division Awards 5525, 5921). No such evidence is offered in the record. In light of Rule 98 (c) the Organization must also substantiate that the work at bar was performed by members of their craft on the former component property. On this point see reasoning found in Second Division Award 6867 which dealt with a comparable question. In that Award the Board held:

"Since the petitioning Organization has not demonstrated to this Board that the work in question is reserved to the Organization exclusively by clear, definite and unambiguous language of a rule, unencumbered by other rules of the agreement, then in order for us to sustain the instant claim the Organization must demonstrate that (the work at bar was) historically and exclusively performed by the SMWIA craft system-wide. By system-wide we mean that the burden of proof is on the Organization to show exclusivity of practice system-wide on the former (railroad). We conclude that the Petitioner has clearly not met its burden of proof concerning a system-wide practice of (this work) on the former (railroad). Therefore, we must deny the claim."
(See also Second Division Awards 7244, 8442, 11260).

The Organization has not proven exclusivity to the work of disassembly and assembly of the metal shelving racks by Agreement language, nor have they established work jurisdiction rights by means of evidence of a system-wide past practice. Nor was jurisdiction over this work by this craft an exclusive practice on a former component property.

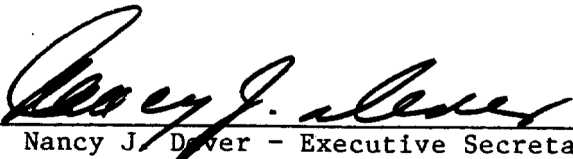
On the basis of the record as a whole the Board must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1991.

Labor Members' Dissent

To

Award 12071 Docket No. 11545-T

The majority opinion in this instance grossly erred in disregarding the agreement and the blatant violation of same.

The recognized and quoted Rule 71, of the current agreement and the clear language contained therein was ignored.

Evidence was presented showing this assignment was improper which the majority did ignore.

On Page 2, the opinion refers to B & B Rule 55 (f) First Class Carpenter. A careful reading of that quoted rule does not contain the work in contention. This was not carpenter work coming within the Scope of that agreement.

This award completely ignores the controlling agreement and the numerous awards cited by the employees. We vigorously Dissent to Award 12071 as being contrary to the agreement.

Billy J. Boffitt

Mark Filipovic

Ronald E. Kowalski

Shirley A. Hearn

