Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12072
Docket No. 11566-T
91-2-88-2-45

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
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(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

1. The Carrier violated the provisions of the current controlling agreement, Rule 94 in particular, when they improperly assigned other than sheet metal workers to inspect, connect and disconnect air hoses; inspect for proper cooling water levels and leaks; and inspect operation of air brakes and sanders on locomotives at Memphis, Tennessee on October 11, 1986, following the blanking and abolishment of the sheet metal worker's position on that shift.

2. That accordingly, the Carrier be required to compensate Sheet Metal Worker E. W. Gregory in the amount of eight (8) hours of pay at the rate of time and one-half the prevailing rate 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 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 waived right of appearance at hearing thereon.

The claim filed by the Organization alleges that the Carrier blanked a first shift Sheet Metal Worker position at Memphis, Tennessee, on October 11, 1986, and thereafter used an Electrician and a Machinist to perform the work of inspecting, connecting and disconnecting air hoses, of inspecting for proper cooling water levels and leaks, and of inspecting the operation of air brakes and sanders on locomotives. The Organization alleges that the work in question was reserved exclusively to the Craft in accordance with Work Classification Rule 94. This Rule reads:

"Rule 94: Sheet Metal Workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings 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 babbitting, the bending, fitting, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes; cutting and threading pipe except as defined in Rule 96; the operating of babbit fires, oxyacetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, molders' work and all other work generally recognized as sheet metal workers' work."

The Organization also argues that the work at bar belongs to the Sheet Metal craft as a matter of past practice.

Absent resolution of this claim on the property it was docketed before this Board for final adjudication. The Board advised the International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers and the American Railway and Airway Supervisors Association of their 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 by the International Association of Machinists and Aerospace Workers wherein it is argued that neither contractual right or past practice reserved the work in question to Sheet Metal Workers. The International Association of Electrical Workers also filed a Third-Party Submission and objected to the merits of the Organization's position. The American Railway and Airway Supervisors Association did not file a Third-Party Submission. The Sheet Metal Workers filed a rebuttal submission to the International Association of Machinists' Third-Party Submission.

In denying the claim the Carrier argues that the first shift position in question was not "blanked" as asserted by the Organization. Rather the position was abolished two years earlier due to insufficient work to justify the employment of a Sheet Metal Worker. The Carrier states that no exception was taken to the abolishment until the filing of the instant claim. In this regard, the Carrier alleges that the Organization's claim is in violation of the time limit Rule 34(a) account it was not progressed until approximately two years after the position was abolished.

Notwithstanding the foregoing, the Carrier asserts that the language of Rule 94 does not reserve the work in question to the craft of Sheet Metal Workers. It is the Carrier's position that manipulating gladhands on rubber air hoses does not constitute connecting and disconnecting "pipes." Further, the inspection for proper water levels/leaks, and the inspection of air brakes and sanders is not work designated by Agreement to Sheet Metal Workers.

The Carrier holds that the connecting and disconnecting of air hoses on this property is work performed by Engineers, Firemen, Brakemen, Laborers, and Machinists and has never been exclusively performed by Sheet Metal Workers. Likewise Machinists perform air brake tests. Inspection of water levels/leaks according to the Carrier, is "nothing more than a visual inspection" and does not involve connecting water pipes to reestablish proper water levels. This inspection requires the use of a simple plastic or rubber water hose. In summary, the Carrier asserts that the work in question is not reserved to Sheet Metal Workers by Agreement or by past practice and that it is, in fact, work not requiring special tools or skills.

After review of the facts in this case the Board concludes first of all that the Sheet Metal Worker position in question was, in fact, abolished on June 29, 1984 and not "blanked" on October 11, 1986. The premise upon which the instant claim is based is, therefore, flawed. Further, a close reading of Rule 94 does not warrant conclusion that it exclusively reserves the work in question to the craft. Precedent Awards submitted by the Organization have been restudied. Second Division Awards 9837, 10099 and 10205 were rendered on another property wherein the Carrier acknowledged that the work in question belonged to the Sheet Metal Workers. Such is not the case here. Additionally, in the former Award, the work was found to be of a "de minimus" nature. In Award 10049 the Board found the work performed to be incidental to the Sheet Metal Worker's main duties. While Award 6341 lends support to the Organization's position the Board here finds it to be in conflict with more well-reasoned Awards such as Second Division Awards 6211, 6727, 9992 and 11535.

It is well established that where Agreement language does not grant exclusivity with regard to the assignment of work then the burden is on the Organization to show that the aggrieved work is reserved to their craft by system-wide practice historically, traditionally, and customarily (Second Division Awards 5525, 5921, 11162 and 11246).

The Organization's reference to the Miami Agreement of February 13, 1958, is inapplicable since the Carrier was not signatory to that Agreement.

The issues related to relief, to the correctness of the Claimant cited in this case will not be addressed by the Board since the claim must be denied on merits.

A W A R D

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

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

Labor Members' Dissent

To

Award 12072 Docket No. 11566-T

It is inconceivable that the majority could totally disregarded the precedent awards cited by the Organization in their conclusion of this issue before the Board.

The majority opinion disregarded the precedent awards when they concurred with the Referee's findings that "Award 6341 lends support to the Organization's position", reflects a cavalier attitude toward such award and the agreement.

This claim was restricted to the location cited and has no hearing on practices at other locations. The result of this Award is to continue to deny to the Sheet Metal Workers' Craft work that has been historically performed by that craft.

The majority's finding is a continuing attempt to further dilute the existing Rule and historical practice on this property.

Therefore, because this decision is so erroneous, we are compelled to Dissent.

Billy J. Coppett

Mark Filipovic

Ronald E. Kowalski

Shelia A. Heck