

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
(
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

1. The Carrier violated the provisions of the current controlling agreement when they improperly assigned other than Sheet Metal Worker in violation of Rule No. 1 of the Amtrak Agreement and the 1984 Implementing Agreement between Amtrak and the Washington Terminal Co., and the Organization.

2. That accordingly, the Carrier be required to compensate Sheet Metal Workers R. Huber and R. W. Ayers eight (8) hours pay at the straight time rate for the dates of June 14,15,16,22,23 and 24, 1988.

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 were given due notice of hearing thereon.

On August 11, 1988, the Local Representative of the Organization filed a Claim on grounds that the Carrier had been in violation of "...Rule #1 and implementing agreement of 1984" when it assigned B&B carpenters to install air conditioning duct work. The work occurred on June 14-16 and 22-24, 1988, at the Carrier's Alexandria, Virginia, ticket station/waiting room. Relief requested was "8 hours at normal hourly rate per day" for the two Claimants named in the Statement of Claim.

The Claim was denied by the Carrier. Thereafter it was appealed by the Organization up to and including the highest Carrier Officer designated to hear such. Absent resolution of the dispute it was docketed before the Second Division for adjudication. The Brotherhood of Maintenance of Way Employees submitted a Third Party Submission for the record and also argued its position at the Referee Hearing.

The Agreement provisions at stake in this case, according to the Organization, are Rules 1 of the Amtrak Agreement, and Sections 6 and 13 of the 1984 Implementing Agreement between the Organization, Amtrak, and The Washington Terminal Company. These provisions read as follows:

"Rule 1 - CLASSIFICATION OF WORK:

Pending adoption of a national classification of work rule, employees will ordinarily perform the work which has been performed traditionally by the craft at that location, if formerly a railroad facility, or, as it has been performed at comparable Amtrak facilities, if it is a new facility.

Section 6

A separate seniority district is hereby established for employees accepting employment with Amtrak. The district is defined as the territory extending on a 30-mile radius from the WTCO Station building, excluding the Auto Train facility at Lorton, Virginia.

Section 13

Work being performed by a Craft and Class of employee of WTCO shall continue to be recognized and performed at the new Amtrak's Washington Seniority District by the respective Craft and Class of employee without change."

Also at bar in this case is the current Classification of Work Rule for the Organization which is found in Rule 54 of the Agreement. It reads as follows:

"Rule 54

Sheet metal workers' work shall consist of tinning, copper-smithing, 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 babbitt-
ting, the bending, fitting, cutting, threading,

brazing, connecting and disconnecting of air, water, gas, oil and steam pipes; the operation of babbitt 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."

The Organization argues that in the new seniority district created by the Implementing Agreement only the Lorton Auto Train facility was to be excluded from coverage under Rule 1. The Organization further argues that "...it is quite clear that the new district was to be considered under the existing agreement" as outlined in Section 13 of the same Implementing Agreement.

In its denial of the Claim the Carrier argues that "air conditioning work at Alexandria, Virginia, was not traditionally performed by SMWIA represented employees". In its Third Party Submission the Maintenance of Way Employees argues that there is no evidence that the Sheet Metal Workers "ever performed the work of installing prefabricated air conditioning ducts at the location in question...."

The Board must observe that Rule 1 references "work which has been performed traditionally by the craft at (a) location...." If the Organization argues that "the new district was to be considered under the existing agreement" the more appropriate conclusion would be that it had rights to the Alexandria, Virginia, work only if it had been traditionally performed by that craft at that location. There is no evidence that such is the case. Likewise, Section 13 of the 1984 Agreement references "work performed by a Craft or Class of employee of WTCO shall continue to be recognized and performed at the new Amtrak's Washington Seniority District...." The language of this section of the 1984 Agreement lends further credence to the language of Rule 1 that for the craft to have jurisdiction over work in Alexandria, Virginia, it must show evidence that it had traditionally done such work. The record contains no such evidence. For work to "...continue to be recognized and performed" it logically had to be performed in the past. On the basis of the language of the Agreements at bar the Board must conclude that the more reasonable interpretation leads to the conclusion that the instant Claim cannot be sustained.

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 18th day of December 1991.

CARRIER MEMBERS' CONCURRING OPINION
TO
AWARD 12204, DOCKET 11923-T
(Referee Suntrup)


The Majority thoughtfully considered the Organization's Statement of Claim before this Board and correctly held:


"The Agreement provisions at stake in this case, according to the Organization, are Rules 1 of the Amtrak Agreement, and Sections 6 and 13 of the 1984 Implementing Agreement between the Organization, Amtrak, and The Washington Terminal Company." (Emphasis added)

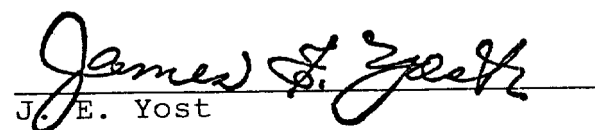
Thereafter, the Majority decision quotes Washington Terminal Company Classification of Work Rule 54. No further reference is made to Rule 54 because the Majority found that notwithstanding the Organization's new citation (raised for the first time before the Board as Exhibit "C" to its Submission) the fact of the matter is there is no Rule 54 in the parties' Agreement. The October 1, 1977 Agreement contains only 48 enumerated Rules.

As a final note, it is significant that with or without the disputed Rule 54, the Board concluded:

"On the basis of the language of the Agreements at bar the Board must conclude that the more reasonable interpretation leads to the conclusion that the instant Claim cannot be sustained."


M. C. Lesnik


R. L. Hicks


J. E. Yost


M. W. Fingerhut


P. V. Varga