

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12494
Docket No. 12138-T
93-2-91-2-8

The Second Division consisted of the regular members and in addition Referee Hyman F. Cohen when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association)
(Terminal Railroad Association of St. Louis)

STATEMENT OF CLAIM:

"1. That under the controlling agreement it was improper for the Carrier to assign other than Sheet Metal Workers the work of connecting and disconnecting piping to, and repairing of air feeder alcohol dispensers on portable air compressors.

2. That accordingly, the Carrier be ordered to additionally compensate Sheet Metal Workers B. Hall and V. Levandowski six (6) hours each at the current pro rata rate for this violation."

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 employe 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.

As Third Party in Interest the International Association of Machinists and Aerospace Workers and the Brotherhood of Maintenance of Way Employees were notified of the pendency of this dispute before this Division and have filed a Submission with the Division.

On May 1, 1990, the Carrier assigned the work of connecting and disconnecting piping to, and the repairing of air feeder alcohol dispensers on two (2) portable air compressor to four (4) members of the Maintenance of Way craft.

The Organization contends that the work in question falls within the language and intent of the Classification of Work Rule, Rule 79:

"Sheet Metal Workers' work shall consist of tinning, cooper smithing and pipe fitting in shops, yards, buildings, or passenger coaches and engines of all kinds, the maintaining of parts made of sheet copper, brass, tin, zinc, white metal, black, planished, pickled and galvanized iron of ten gauge and lighter * *, including brazing, soldering, tinning, leading and babbitting the bending, fitting, cutting threading, brazing, connecting and disconnecting of air, * *, water gas, oil and steam pipes; * *, on work generally recognized as Sheet Metal Workers' work and all work generally recognized as Sheet Metal Workers' work."

Specifically the Organization places emphasis on the following terms of Rule 79 in support of its claim:

"Sheet Metal Workers' work shall consist of *
* pipe fitting in shops, yards, buildings, on
passenger coaches and engines of all kinds *
*."

Moreover, the Organization seek to reinforce its position by referring to Rule 27, which states:

"None but mechanics or apprentices regularly employed, as such shall do mechanics' work per special rules of each craft."

However, Rule 27 does not resolve the central inquiry in this case, which is whether the work in question is exclusively reserved to the Sheet Metal Workers. In addressing this issue, the Organization places strong reliance on Rule 79, and past practice.

After careful examination of Rule 79, this Board cannot conclude that the language contained therein covers the work involved in the major overhaul of portable air compressors. To merely focus on the terms of Rule 79 in claiming that the work in question belongs to the Sheet Metal Workers to the exclusion of all other crafts is insufficient as a basis for the Organization's claim.

It has been stated that "a scope rule alone is almost meaningless." Second Division Award 8293. Accordingly, the Organization contends that "past practice specifically reserves the applicable work concerning piping on engines of all kinds which in this instance includes portable compressors." However, the Carrier denies that the disputed work belongs to Sheet Metal Workers by custom, practice, tradition or Agreement to the exclusions of all others* *."

This Board is unable to resolve the factual issue of whether the disputed work is reserved exclusively to Sheet Metal Workers, in light of the conflicting claims by the parties. In order to prevail in this dispute, the Organization must show by strong and conclusive evidence that it is entitled to the work. Specific Rule language and evidence of a past practice with regard to the work in question cannot be found in the record. The Organization has been unable to establish that the work performed on May 1, 1990 was reserved exclusively to its craft as opposed to work which has been historically performed by other employees in routinely performing their respective duties.

The Organization has also raised a procedural issue, by claiming that its appeal dated July 25, 1990 was not answered by the Carrier in a timely manner as required by the following provisions of Article V of the Agreement.

"ARTICLE V-CARRIERS' PROPOSAL NO. 7

(a) Should any claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify * * of the reasons for such disallowance. If not so notified, the claim of grievance shall be allowed as presented.

* * *
(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and the decision by the Carrier, shall govern in appeals taken to each succeeding officer...."

The Organization points out that the Carrier's letter dated August 15, 1990 refers to a claim dated May 1, 1990 rather than May 2, 1990, when the claim was dated. In its November 7, 1990 letter to the Carrier, the Organization indicated that "it would be beyond reasoning, if not impossible to apply that letter to this issue."

Contrary to the Organization's contention in its November 7 letter, the Carrier referred to the Claimants by name in the August

15, 1990 letter also acknowledged receipt of the Organization's letter dated July 25, 1990 appeal which referred to the Organization's position concerning the instant Claimants. Moreover, in its August 15 letter, the Carrier declined the claim by indicating that the language of the Scope and Classification Rules was broad and general. It also stated that the Organization "failed to demonstrate an exclusive right to the work in question" and failed to refer "to specific language" in Rule 79 covering the "subject work."

In light of the terms of the Carrier's August 15, 1990 letter, this Board cannot conclude that the Carrier failed to address "any specifics involved" and that "it would be beyond reasoning, if not impossible to apply that letter [the Carrier's August 15, 1990 letter] to this issue." Furthermore, the Carrier advised the Organization during conference which took place within the time limits "that the initial claim was dated May 2, 1990 laying claim for May 1, 1990.

In addition to the aforementioned considerations concerning the timeliness issue which has been raised by the Organization, it should be noted that the issue was not advanced in the claim which the Organization filed with the Board. The Board has consistently declared that it does not have the power to consider issues which have not been raised in the original statement of claim. See, e.g., Third Division Awards 19790, 21543 and 28529.

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 6th day of January 1993.