

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12599
Docket No. 12460-T
93-2-91-2-270

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
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(Soo Line Railroad Company

STATEMENT OF CLAIM:

- "1. That in violation of the current agreement, Sheet Metal Workers T. A. Langsdorf, L. P. Burris, Jr., A. M. Klinger, J. J. McNaughton, Jr., K. W. Trout, Jr., R. M. Nye, R. N. Nelson, J. J. Osvatic Jr., B. E. Zabel, R. D. Curtis, D. L. Peterson, R. H. Dallunhn, T. N. Nystrom, R. C. Remme, B. J. Cunningham, C. Kuckes, Jr., and G. H. Gilmore were arbitrarily denied their right of Sheet Metal Workers to perform work belonging exclusively to their Craft.
2. That accordingly, the Carrier be ordered to compensate the aforementioned Claimants two hundred and sixty eight (268) hours pay to be equally divided among Claimants for the deliberate 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 Brotherhood of Maintenance of Way Employes was advised of the pendency of this dispute, but did not file a Submission with the Board.

On March 20, 1990, Carrier served notice upon the General Chairman of the Electrician's Craft and the Sheet Metal Worker's Craft that it intended to subcontract Shop Craft work connected with the construction of a new intermodal facility at its Minneapolis (Shoreham), Minnesota Yard. As this Yard was being completed, on ten dates between July 12, 1990 and July 31, 1990, Carrier used three of its own employees, a Pump Repairman and two members of the Bridge and Building Department, members of the Maintenance of Way Craft, to install approximately 1500 feet of two inch pipe to supply air to the facility. As the pipefitting work was getting underway, the Sheet Metal Workers International Association made inquiry as to why B&B forces were doing the air line pipefitting and not members of its Craft. The Organization was told that a decision had been made to give the work to the Maintenance of Way Craft. A Claim was filed contending that members of the Sheet Metal Workers Craft had exclusively performed all pipefitting at this facility in the past. Carrier denied the Claim on the grounds that Sheet Metal Workers do not have an exclusive right to the work at Shoreham.

The evidence offered by the Organization indicates that Sheet Metal Workers have historically performed pipefitting work at Shoreham to the exclusion of all others. All of the Shop Craft Organization's in the facility are in accord on this point. Carrier's basis of rejection of this evidence is that it is self-serving and does not satisfy the Organization's burden of proof. It is not sufficient to reject evidence offered in support of a contention, merely because it may be self-serving. It is rare, indeed, when evidence offered in support of a claim or grievance, by either side, would not be self-serving to the side offering it. If evidence is to be rejected, it must be specifically demonstrated that it is faulty in some fashion. Simply stating that it is self-serving does not accomplish this result.

Because Carrier maintained a consistent position on this point on the property, the Board is asked to accept the conclusion that Sheet Metal Workers do not have an exclusive entitlement to pipefitting work at this location. More is necessary than just a continued denial of exclusivity. Once the Organization has offered its proofs on the matter of exclusivity Carrier is obligated, if it expects to prevail, to offer something in rebuttal. This it failed to adequately do. Carrier merely continued to reject the evidence offered by the Organization, without submitting anything of substance to support this rejection. In this respect, the Board notes, that it was well within Carrier's power to offer evidence of

substance, if it was available. This could have been work orders, time sheets, etc., indicating that others than Pipefitters did such work in the past at Shoreham.

The Claim will be sustained. As reparations the Board will order that an amount equivalent to the number of hours utilized by the Pump Repairman and B&B Department employees be distributed equally to the Claimants listed in Part 1 of the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 27th day of October 1993.