Award No. 2316
Docket No. 2194
2-AT&SF-SM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Sheet Metal Workers)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Coast Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than Sheet Metal Workers were improperly used to fabricate and install metal flashing out of 26 gauge galvanized iron to the skylight in the car shed on the repair track, at Richmond, California, on April 14, 1953.

2. That accordingly the Carrier be ordered to:

(a) Cease and desist from using other than Sheet Metal Workers to perform the aforesaid work;

(b) Additionally compensate Sheet Metal Worker R. M. Neal in the amount of eight (8) hours at the time and one-half rate for April 14, 1953.

EMPLOYES' STATEMENT OF FACTS: Under date of April 14, 1953, the carrier assigned two maintenance of way employes to fabricate and apply 26 gauge galvanized metal flashing to the skylight in the car shed on the Richmond, California repair track. The two maintenance of way employes each worked four (4) hours on the work here in dispute. The carrier at this point employe Sheet Metal Worker R. M. Neal (hereinafter referred to as the claimant) and other sheet metal workers who were available to perform this work.

The case was handled with the designated officers of the carrier who all decline to settle the case in its entirety with the exception of Mr. L. D. Comer, who agreed without prejudice to any principle involved to dispose of the claim by allowing pay to shop employes for the time maintenance of way employes used the tin shop facilities for the manufacturing, cutting and shaping of the flashing which was not acceptable to the employes.

by the carrier's forces. Certainly, the carrier cannot unilaterally transfer the work from B&B forces to sheet metal workers.

If the contention of the employes that they have the right to apply the flashing to the skylight of the car repair shed is sustained, what is to prevent them from contending that they have the right to perform the same work on all buildings of the carrier. Obviously, such a contention is wrong and would be bitterly contested by the maintenance of way employes to whom the work historically belongs. The maintenance of way employes have zealously guarded their rights in this respect and the carrier has in the past paid penalties to them because of shop crafts employes performing maintenance and repair work on shop buildings.

Rule 83, which is relied upon by the employes, was never intended to apply to a situation such as this where repairs to the building itself are involved, but to appurtenances to buildings, such as ". . . air, water, gas, oil and steampipes . . .", and the skylight was none of these.

Finally, the carrier points out in respect to Item (b) of the employes' claim that numerous awards of the Adjustment Boards are to the effect that penalty rate for depriving an employe of work is pro rata rate of the position. See Second Division Award 1268, Third Division Awards 3504, 4203, 4244 and many others, all coming to the same conclusion.

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.

The parties to said dispute were given due notice of hearing thereon.

The organization contends carrier has improperly used employes, other than sheet metal workers, to fabricate and install metal flashing, made out of 26 gauge galvanized iron, to the skylight in the car shed on its repair track at Richmond, California. It asks that we order carrier to cease and desist using other than sheet metal workers to perform this work and to compensate Sheet Metal Worker R. M. Neal for eight (8) hours at time and one-half rate for Tuesday, April 14, 1953.

Admittedly on Tuesday, April 14, 1953 two (2) B&B employes spent a total of about eight (8) hours in the Mechanical Department pipe and tin shop fabricating metal flashing to be applied, and which was subsequently applied by them, on a skylight in the car shed on its repair track at Richmond, California. Carrier employed sheet metal workers at this point at the time, of whom claimant was one, and it is contended carrier should have had them perform the work, that is, the work of fabricating the metal flashing and installing it on the skylight in the car shed.

The record in this docket, and in Docket 2195 involving the same parties and the same subject matter, discloses that in the past no one class or craft of employes on this carrier has exclusively performed work such as installing fabricated metal flashing on buildings. Sometimes sheet metal workers were used to perform it and more often it was performed by employes represented by the Brotherhood of Maintenance of Way Employes, particularly B&B employes.

Carrier objects to this Division assuming jurisdiction of this dispute on the grounds that there are other employes represented by the Brotherhood of Maintenance of Way Employes involved therein to whom notice has to

be given within the meaning of Section 3, First (j) of the Railway Labor Act. To serve such notice on them would serve no useful purpose for this Division does not have jurisdiction to pass upon the question of whether or not employes represented by the Brotherhood of Maintenance of Way Employes have a contractual right thereto under the provisions of their agreement with the carrier even if such notice were served. That question can only be answered by the Division of the National Railroad Adjustment Board having jurisdiction of disputes involving employes whom that organization represents. We find this contention to be without merit.

The claim is based upon Rules 29(a), 82 and 83 of the parties' effective agreement, which are as follows:

> "Rule 29(a). None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft. This rule does not prohibit foremen in the exercise of their duties, or foremen at points where no mechanics are employed, to perform work."
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> "Rule 82. Any man who has served an apprenticeship, or who has had four (4) or more years' experience at the various branches of the trade, and who is qualified and capable of doing sheet metal work or pipe work as applied to buildings, machinery, locomotives, cars, etc., whether it be tin, sheet iron, or sheet copper with or without the aid of drawings, and capable of bending, fitting, and brazing of pipe, shall be considered a sheet metal worker."
>
> "Rule 83. 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 for repairs 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 and steampipes; pouring of brass; 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."

Rule 29(a), which relates to "Assignment of Work," would not have application until it is determined that the work comes within the scope of Rule 83.

Rule 82, which relates to the "Qualifications" of sheet metal workers, has no relation to the question here presented. It is true that among such qualifications a sheet metal worker must be "capable of doing sheet metal work * * * as applied to buildings." but that is understandable in view of the practice hereinbefore referred to.

We have examined Rule 83 and find no mention therein that the work therein classified specifically relates to when it is being done "on buildings" but does when it is being done "in buildings." In the absence of specific language relating thereto, when done on buildings, it must necessarily come under "all other work generally recognized as sheet metal workers' work." This language would not have the effect of abrogating practice in existence on the property at the time. However, as to the fabricating of the metal flashing we think it comes specifically within the language of Rule 83 and carrier improperly had these two (2) B&B employes perform it.

In view thereof we find the claim should be allowed to that extent and claimant compensated for the time used by these two (2) B&B employes in fabricating the metal flashing used in connection with the skylight in the car shed but denied as to any time used by them for installing it after it had been fabricated. However, the claim should be at the pro rata rate applicable, not at time and one-half rate, for the penalty for work lost by

a class or craft through improper assignment thereof is, under the situation here disclosed, the pro rata rate applicable thereto.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1956.

CONCURRING OPINION TO AWARD 2316

The Labor Members concur with the majority's conclusion that the work of fabricating metal flashing, made out of 26 gauge galvanized iron, for installation or application to the skylight in the car shed on the repair track at Richmond, California is sheet metal workers' work, but do not agree with the majority's conclusion in their interpretation of the intent and application of Rule 83 of the current agreement. They state:

> "We have examined Rule 83 and find no mention therein that the work therein classified specifically relates to when it is being done 'on buildings' but does when it is being done 'in buildings'. In the absence of specific language relating thereto, when done on buildings, it must necessarily come under 'at other work generally recognized as sheet metal workers' work'. This language would not have the effect of abrogating practice in existence on the property at the time."

Rule 83 specifically and clearly states:

> "Sheet Metal Workers' work shall consist of tinning, coppersmithing and pipefitting in **shops, yards, buildings . . . of all kinds;** the building, erecting, assembling, installing, dismantling for repairs and maintaining parts made of . . . tin, . . . black, planished, pickled and galvanized iron of 10 gauge and lighter, . . . and all other work generally recognized as sheet metal workers work."

The car shed facility involved in the dispute identified as Award 2316 is located on the repair track in the car yard at Richmond, California and comes within the scope of Rule 83. The shop buildings involved in the dispute identified as Award 2317 are located in the shop yard at Topeka, Kansas and come within the scope of Rule 83.

The identical language contained in Rule 83 has existed in agreements covering Sheet Metal Workers on the property of the carrier since the negotiation of the National Agreement and any allocation of work embraced within the scope of these agreements to others than Sheet Metal Workers has been in violation of these agreement rules and the conclusions of the majority in these respects are erroneous.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
George Wright