Award No. 3775
Docket No. 3722
2-B&M-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William Doyle when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Sheet Metal Workers)

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES: 1. The Carrier violated the effective Agreement commencing January 1958, and on subsequent dates in April, when it assigned employes from the Machinists' forces to the performance of piping work on Maintenance of Way Department Multiple Tamper Machine.

2. The Carrier shall now compensate Sheet Metal Workers D. H. Smith and Bernard Mosher for ninety-six (96) hours at their respective rates of pay and at their punitive rate, equally divided between them on account of this violation of Agreement referred to in Part 1 of this Claim.

EMPLOYES' STATEMENT OF FACTS: The carrier maintains a repair shop for its engineering department work equipment at East Somerville, Massachusetts, in the Boston Yard Area. Less than a mile away the carrier maintains a shop and headquarters point for its sheet metal workers' force engaged in work under the supervision of the Bridge and Building Department-Engineering at East Cambridge, Boston Yard Area.

The employes at the sheet metal workers' headquarters are assigned to "Duties subject to Road Service." Although assigned to a headquarters point, their assigned territory for the performance of their specific work extends over the entire Terminal Division. Both the East Somerville Work Equipment Shop and the sheet metal workers' shop at East Cambridge are within this Terminal Division Area, only a short walking distance from each other.

On January 21, 22, 23 and February 3, 1958, two employes of the machinists classification working at the work equipment shop performed certain piping work on the McWilliams — MTIO — Multiple Tamper — a grand total of 64 man hours was consumed in performing this work. On April 22 and 23, 1958, two employes of the machinists' class working at the work equipment shop performed certain piping work on the Matisa — MT 20 — Multiple Tamper — a grand total of 32 man hours was consumed in performing this work.

It is respondent's position claimants do not have jurisdiction of this work. Assuming without conceding they did, then it was proper to use employes of another craft under Article VII of the National Agreement of August 21, 1954.

POSITION OF THE CARRIER: It will be conceded we believe that claimants hold no roster rights in the work equipment department. It follows that they can claim no right to work under its jurisdiction. The claim should be denied at the outset on that basis.

There were, and are, no sheet metal workers employed within the work equipment department. Therefore, Article VII of the August 21, 1954 agreement applies:

> "At points where there is not sufficient work to justify employing a mechanic for each craft, the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft that it may be necessary to have performed."

The work in question involved approximately 20 to 25 hours over a seven day work period, and during no day within such period was eight hours of the claimed work performed by the work equipment repairmen. Numerous awards of your Board in similar cases support the railroad's position that the insufficient work rule is applicable.

Further in support of the railroad's position that sheet metal workers held no right to the work in question, a similar situation exists at the Yard 8 shop. This is another department in close proximity to the point of claim. It is a seniority point separate from the work equipment and Bridge and Building Departments. All piping and repairing of train lines on freight and milk cars, new piping, repiping and repairs to steam lines on milk cars, repairing and replacing of smoke pipes, stacks, and repairing of stoves in caboose cars are performed by carmen on duty at Yard 8 Shop.

The above is another case of application of the Insufficient Work Rule. There are numerous other locations and instances where the same condition exists, which is permissive under the rule, throughout the system.

Carrier's Exhibit C from Supervisor-Work Equipment, H. A. Thyng, supports the fact that the work in question has not been performed by sheet metal workers, and that sheet metal workers have not been employed at this point. Further, that work equipment repairmen in the field, numbering eight employes, presently perform any and all work of all classes under the shop craft agreement on the basis of having that right under the insufficient work rule without challenge by any craft.

While there is no merit to the claim of the petitioner, the 96 hours claimed is far in excess of the actual hours in which it took to perform the work.

All data and arguments herein contained have been presented to the organization in conference and/or correspondence.

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 were given due notice of hearing hereon.

The Sheet Metal Workers here allege violation of the effective agreement arising from assignment of machinist employes to perform work on a multiple tamper machine of the Maintenance of Way department.

The work in question arose in the Work Equipment Department. This unit has a distinct seniority roster and is under the Chief Engineer. It is located at East Somerville, Massachusetts in the Boston Yard Area. When this problem arose there were no sheet metal workers in the department.

The shop and headquarters point for the mentioned sheet metal workers is at East Cambridge also in the Boston Yard area and less than 1 mile from the location of the Work Equipment Department. It is under the supervision of the Bridge and Building Department which is also under the jurisdiction of the Engineer.

Since the work in controversy is clearly within the scope of Rule 88, the sheet metal worker classification rule, we need only determine whether the facts before us bring into play the exception set forth in Article VII of the August 21, 1954 agreement which reads:

> "At points where there is not sufficient work to justify employing a mechanic of each craft the mechanic or mechanics employed at such point will so far as they are capable of doing, perform the work of any craft that it may be necessary to have performed."

What is the meaning of the term "points" or "at points" as it appears in Article VII? Does it refer to geographical locations or merely to different seniority rosters at the same location? In Second Division 3413 it was restricted to the latter but this decision had reference to a rule which is not before us here and custom was also shown in support of the restrictive ruling. Award 3527 is more nearly in point. There the claim was denied but the "point" in that case was 126 miles distant from the headquarters of the sheet metal worker claimant. Thus this latter award furnishes a favorable contrast to the instant docket.

A further noteworthy factor here is that sheet metal workers were actually used for a companion job in respect to which a claim was initially made but later withdrawn. This appears in a letter, (an attached exhibit) from J. J. McDonald on behalf of the carrier. Thus it is feasible to use sheet metal workers in circumstances like the present.

We are convinced that the term "at points" means a geographic location; that Article VII, **supra** in circumstances like the present one must be considered a rule of necessity resulting from distance and not a rule of momentary expediency. Thus we conclude that the claims should be and they are hereby sustained. Nevertheless there must be remand to determine the exact number of hours — 32 as contended by the organization or 20 to 25 as urged by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1961.

CARRIER MEMBERS' DISSENT TO AWARD NO. 3775

The majority have reached erroneous findings of fact and conclusions. The result is so at variance with both the plain intent of a national rule and the prior awards of this division we are impelled to dissent.

The majority ignores completely the claimants' lack of any seniority rights in the Work Equipment Department. They were rostered only in the Bridge and Building Department. It is not questioned each of these departments has always been a separate and distinct seniority district for each class of mechanics. It follows claimants had no contract right to work. That carrier may elect to use men from the Bridge and Building Department on one occasion does not create an exclusive right to similar work on other occasions. Award 3527.

This fundamental error is also basic to the misapplication of Article VII of the August 21, 1954 Agreement. The majority asks whether "points" in Article VII refers to "geographical locations or merely to different seniority rosters at the same location." The conclusion is inescapable based on prior decisions that it refers to both. In Awards 3527 and 3677, claimants' seniority district embraced the geographical location involved. In Award 3413, the same geographical location but separate seniority districts were under consideration.

If the principle of continuity in following earlier decisions in later cases is to have more than lip service, the Findings in this case should be simply: "The claim is without merit on the authority of Award 3413." The facts in the two cases are indistinguishable. The majority states: "In Second Division Award 3413 it [the term 'points'] was restricted to the latter [seniority district], but this decision had reference to a rule which is not before us here and custom was also shown in support of the restrictive ruling."

The attempt to distinguish is patently fallacious. The Findings in Award 3413 specifically say, and the record supports the statement, that "on some occasions carrier has sent locomotive department sheet metal workers to do repair work at the car department." The "custom" referred to was the maintenance of separate rosters for car and locomotive mechanics, just as here separate rosters had always been maintained.

There was no rule in Award 3413 "which is not before us here." The Findings, and indeed the dissent, in the earlier case are based on only two rules, Rule 33 which is Article VII of the August 21, 1954 Agreement, and Rule 32, the seniority rule. The latter is identical with Rule 25 of the agreement here (a part of the record), except that three additional departments are

included on the Boston and Maine; and there is variation in the craft rosters for carmen. Neither difference is significant.

The majority errs in making Award 3775, and we dissent.

H. K. Hagerman

D. H. Hicks

Paul R. Humphreys

William B. Jones

T. F. Strunck