Award No. 4130

Docket No. 3859

2-FEC-SM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)

THE FLORIDA EAST COAST RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly assigned Employes of the Maintenance of Way Organization to install approximately 1000' of 1½" pipe and necessary valves and fittings used to convey oil from storage tanks to steam generators in power house, located within the shop yard area. And to renew 42' of 4" pipe used as suction oil line, located under ramp in roundhouse at Buena Vista Shops.

2. That accordingly the Carrier be ordered to compensate furloughed Sheet Metal Worker F. L. Slone and Helper Lige Murray in the amount of 240 hours each at straight time rate of pay, this being the approximate time required to install the pipe.

EMPLOYES STATEMENT OF FACTS: The Florida East Coast Railroad Co., hereinafter referred to as the Carrier, maintains and operates at Buena Vista, Florida, shop facilities for the repairing of locomotives, freight and passenger cars and other Maintenance of Equipment Department' equipment. Sheet metal workers are regularly employed at Buena Vista by the carrier to perform sheet metal workers' work specified in an agreement effective May 1, 1953.

During the month of September 1959, the carrier assigned Maintenance of Way employes to install approximately 1000 ft. of 1½ inch pipe and necessary valves and pipe fittings to carry oil from storage tanks to the steam generator in the powerhouse and to renew 42 feet of 4 inch pipe used as a suction oil line under the ramp in the roundhouse.

All of the above work was performed in connection with equipment necessary to the servicing of locomotives and cars and located within the Buena Vista Shop' boundaries.

Sheet Metal Worker F. L. Slone and Helper Lige Murray, hereinafter referred to as claimants, were furloughed, but were available and willing to return to service.

side of the scope of the Agreement upon which the complaint is based."

Again, in the findings of Second Division Award 2695, it was held in pertinent part, that:

> "The preamble of the effective Agreement reads as follows:
>
> " 'The Agreement shall apply to employes of those Carriers who perform work outlined herein in the Maintenance of Equipment Department, Communications Department, Newton Rail Mill and Water Service Department under jurisdiction of the Operating Department.'
>
> "The work involved in this claim was work performed in the yard office at San Francisco and was not work performed in the Maintenance of Equipment Department, Communications Department, Newton Rail Mill nor Water Service Department, which is outlined in the preamble of the effective Agreement. Therefore this claim must be denied."

The work subject of claim having been performed in the Engineering Department by employes of that Department in accordance with a consistent past practice on this Railway, the claim, based on a rule applicable only to work performed in the Maintenance of Equipment Department, must be denied.

For the reasons stated herein, the claim should be dismissed or denied.

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 thereon.

The Carrier maintains certain shop facilities at Buena Vista, Florida, for the repairing of locomotives, freight and passenger cars, and other equipment. In 1959, a one and one-half inch fuel oil pipe line was installed from a Diesel fuel storage tank in the Shop Yard eastward about 1,000 feet to the Coach Yard Power House. In addition, a one-half inch fuel line was extended southward several hundred feet from the one and one-half inch line to an auxiliary tank at the Coach Yard Electric Shop. Moreover, certain maintenance work was performed which included the renewal of portions of the suction line of the lubricating oil system at the Locomotive Shop Roundhouse. All of the above described work was assigned to and performed by employes of the Water Supply Department who are under the supervision of the Engineer of Water and Fuel Service and are represented by the Brotherhood of Maintenance of Way Employes.

The two Claimants, Sheet Metal Worker F. L. Slone and Sheet Metal Helper L. Murray, who are represented by the Sheet Metal Workers' International Association, filed a grievance in which they contended that the work

in question should have been assigned to them instead of to maintenance of way employes. They requested compensation equal to 240 hours each at the pro rata rate. The Carrier denied the grievance.

1. At the outset, the following procedural objections raised by the Claimants require disposition:

The Carrier attached to its initial submission brief an affidavit of E. R. Fredrick, Engineer of Bridges and Buildings, containing certain factual information regarding the matter in dispute (Carrier's Exhibit "A"). Moreover, the Carrier attached to its rebuttal brief copies of four letters from its officials to A. P. Williams, former General Chairman of the Organization (Carrier's Exhibits "B" through "E") as well as a copy of a letter from its chief mechanical officer to R. G. Smith, President of System Federation No. 69 (Carrier's Exhibit "F"). Those letters are also related to the matter in dispute. Finally, the Carrier included in a brief filed on the day of the Referee hearing a statement of O. A. McFarland, former President of System Federation No. 69 and former General Chairman of the Brotherhood of Railway Carmen of America.

The Claimants have requested that the above documents and statements be stricken from the record in accordance with Circular No. 1 of this Board and our Circular A because said documents and statements were not submitted to them during the handling of the instant grievance on the property.

At the Referee hearing, Fredrick declared that he orally presented all information contained in his affidavit during a conference between representatives of the Carrier and the Organization held on January 19, 1960. His testimony stands uncontroverted. No claim has been made by the Claimants that the letters under discussion were not received by the addressees. Thus, the Claimants or their representatives were aware of the factual information contained in the affidavit and the letters prior to the commencements of proceedings before this Division. Under these circumstances, we are of the opinion that the Claimants' procedural objections are without basis.

The record does not show that the statement of McFarland was ever submitted to the Claimants or their representatives prior to the Referee hearing. For this reason, we have disregarded it in reaching our decision.

2. In support of their claim, the Claimants mainly rely on Rule 13 of the applicable labor agreement which reads, as far as pertinent, as follows:

> "Sheet Metal Workers' work shall include . . . pipe fitting in shop yards and shop buildings . . . bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes . . ." (emphasis ours).

Relying on a literal interpretation of Rule 130, the Claimants argue that the work under consideration exclusively belonged to them. However, the rule is well established that "literalness may strangle meaning." See: Utah Junk Co. v. Porter, 328 U. S. 39, 44; 66 S. Ct. 889, 892 (1946); Lynch v. Overholser 369 U. S. 705, 710; 82 S. Ct. 1063, 1067 (1963). This is particularly true with respect to the application and interpretation of a labor agreement. The law is firmly settled that such an agreement, as a safeguard of industrial and social peace, should be given a broad and liberal interpretation consonant with its spirit and purpose—disregarding, as far as feasible, semantic technicalities or undue legalism which would tend to deprive the agreement of its

vitality. See: Award 3954 of the Second Division and cases cited therein. Moreover, it is generally recognized in the law of labor relations that a labor agreement must be construed as a whole. Single words, sentences or sections cannot be isolated from the context in which they appear and be interpreted literally and independently, irrespective of the obvious or apparent intent and understanding of the parties as evidenced by the entire agreement. Stated differently, the meaning of each sentence or section must be determined by reading all pertinent sentences or sections together and coordinating them in order to accomplish their evident aim. See: Frank Elkouri and Edna A. Elkouri, **How Arbitration Works,** Revised Ed., Washington, D. C., BNA Incorporated, 1960, pp. 207-208 and cases cited therein.

In applying those principles to this case, we have reached the following conclusions:

A careful examination of the entire labor agreement has convinced us that the true meaning of Rule 130 cannot be ascertained by reading it literally and in isolation. In order to ascertain its real aim and purpose, the Rule must be read together with the Preamble to the labor agreement which defines the scope of the agreement and thus qualifies Rule 130. See: Awards 1556 and 2198 of the Second Division. For Rule 130 is only applicable here if the work described therein comes under scope of the agreement.

The Preamble provides: "It is understood that this agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment Department of this Railway wherein work covered by this agreement is performed." The Claimants contend that the wording of the Preamble is clear and unambiguous. We disagree. In our opinion, plausible contentions can be made for different interpretations. Specifically, the language used in the Preamble may raise a justifiable doubt as to whether the scope of the agreement is confined to work under the jurisdiction of the Maintenance of Equipment Department as asserted by the Carrier or whether the agreement covers all work performed within the departmental area as asserted by the Claimants. The Preamble is, therefore, subject to a reasonable construction based on long-continued custom or practice well-known to and consistently followed by the parties to the agreement. See: Award 3873 of the Second Division and references cited therein.

The evidence on the record considered as a whole amply proves that work substantially identical with or similar to that here in dispute has, on numerous occasions and at various locations, been performed by employes represented by the Brotherhood of Maintenance of Way Employes during the life of both the previous labor agreements, dated November 19, 1935, and the current one which became effective as of May 1, 1953, except in the case of emergency temporary repairs pending permanent repairs by maintenance of way employes. In addition, the record shows that the question of whether maintenance of way employes or sheet metal workers should perform work of the nature here in dispute was repeatedly discussed between the Carrier and the Organization in the 1940's and 1950's (see: Carrier's Exhibits "B" through "F"). The Carrier persistently refused to assign such work to employes represented by the Organization because of the existing practice to the contrary. The record is barren of any evidence or indication that the Organization ever filed a formal grievance prior to the instant one. Its consistent failure to do so can only be construed as acquiescence in the existing practice. Finally, the scope of the labor agreement as defined in the Preamble remained unchanged when the previous agreement was re-negotiated in 1953. This fact compels the conclusion that the parties in entering into the current agreement did so upon the assumption that the existing practice would continue during the life thereof.

In summary, we find that a consistent and long-continued practice well-known to and accepted by all interested parties has existed under which work of the nature here involved has been exempted from the scope of the labor agreement. This practice has become a part of the labor agreement although not explicitly expressed in it. See: United Steelworkers of America v. Warrior and Gulf Navigation Co., 363 U. S. 574, 582; 80 S. Ct. 1347, 1352 (1960). It follows that the practice can be changed or discontinued only through a modification of the agreement. Section 3, First (i) of the Railway Labor Act does not confer authority upon us to do this.

Accordingly, we hold that Rule 130 of the labor agreement is inapplicable to the instant grievance and that the Carrier did not violate the agreement when it assigned the work under consideration to employes other than sheet metal workers.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1963.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4130

The referee in his findings stated the following:

> "* * * Relying on a literal interpretation of Rule 130, the Claimants argue that the work under consideration exclusively belonged to them. However, the rule is well established that 'Literalness may strangle meaning.' * * *."

Further, it is pointed out by the referee that:

> "* * * The law is firmly settled that such an agreement, as a safeguard of industrial and social peace, should be given a broad and liberal interpretation consonant with its spirit and purpose—disregarding, as far as feasible, semantic technicalities or undue legalism which would tend to deprive the agreement of its vitality. See: Award 3954 of the Second Division and cases cited therein. Moreover, it is generally recognized in the law of labor relations that a labor agreement must be construed as a whole. * * *."

and,

> "In applying those principles to this case, we have reached the following conclusions: * * *."

and then the majority fails to be consistent with the above statements in reaching their conclusion. The record reveals that the employes **never** in this case placed a literal or strangling meaning on the interpretation of Rule 130—on the contrary, insisted this rule and the agreement as a whole are controlling.

Rule 130 is substantive, clear and unambiguous:

> "Rule 130. CLASSIFICATION OF WORK: (a) Sheet Metal Work-

ers' work shall include * * * **in shop yards** and shop buildings. * * *." (Emphasis ours)

and so is the Preamble of this agreement—therefore, to hold that Rule 130 is inapplicable to the instant grievance does violence to the agreement and the spirit and intent for which it was negotiated. The record very clearly projects the fact the pipe work in question was for use and service in the Maintenance of Equipment Department and installed in the shop yards of this Department and Rule 130 definitely spells out Sheet Metal Workers' work and definitely spells out the right to perform this work in the shop yards as well as in the shop buildings. (See: Award 3873).

Thus the majority is in gross error by ignoring the substantive language in the agreement as a whole in their denial of this case.

We dissent.

C. E. Bagwell

T. E. Losey

E. J. McDermott

Robert E. Stenzinger

James B. Zink