

Award No. 4219

Docket No. 4139

2-EJ&E-SM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 20, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)**

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the carrier violated the agreement when work in the roundhouse consisting of the maintaining pipes on engines in such condition as to deliver sand to the rails was assigned to other than pipefitters of the Sheet Metal Workers' craft, after all pipefitters' jobs were abolished in the roundhouse on July 18, 1960.

2. That, accordingly, the carrier be ordered to compensate three pipefitters four hours' pay each for each day beginning with July 20, 1960 and continuing until this violation is discontinued.

EMPLOYEES' STATEMENT OF FACTS: At East Joliet, Illinois, the Elgin, Joliet & Eastern Ry. Co., hereinafter called the carrier, maintains a repair roundhouse and shop, where sheet metal worker pipefitters are employed to perform, among other things, the work involved in this dispute.

In 1958 the carrier abolished all of the positions of the pipefitters who had been working in the roundhouse, contending that such work would be performed by pipefitters who were working in the shops a few feet away. Thereafter, pipefitters were sent from the shop to the roundhouse to perform some of their work, but for the most part the carrier assigned machinists to perform the work of maintaining pipes on locomotives in such condition as to deliver sand to the rails.

A grievance was instituted which resulted in a joint check being conducted on November 23, 24, and on the 12:00 to 8:00 shift on November 25, 1959. A few days after the results of this joint check became known, pipefitter positions were rebulletined in the roundhouse, but they were again abolished effective July 18, 1960, with the carrier asserting that Pipefitters would be sent from the shop to the roundhouse to perform pipefitters' work. Since that time, the carrier has refused to call pipefitters to perform the work of cleaning sand pipes, except on rare occasions when it has suited the local supervision.

1. When pipefitters were assigned only to the 7:00 A. M.—3:00 P. M. shift in the roundhouse at East Joliet (Monday through Friday), why were no penalty time claims submitted when other employes cleaned sandpipes during the 3:00 P. M. to 11:00 P. M. and the 11:00 P. M. to 7:00 A. M. shifts? Why, too were claims not submitted for all shifts on Saturday and Sunday?

2. When pipefitters were assigned only to the 7:00 A. M.—3:00 P. M. and 11:00 P. M.—7:00 A. M. shifts in the roundhouse at East Joliet (Monday through Friday), why were no penalty claims submitted when other employes cleaned sandpipes during the 3:00 P. M. to 11:00 P. M. shift? Again, when no pipefitters were assigned to any shift on Saturday and Sunday, why were no penalty claims not submitted?

3. Since Rule 106 is a system rule which requires equal application at all roundhouses and/or engine terminals on the system, why has it never been necessary to assign pipefitters at all such roundhouses and/or engine terminals where sandpipe cleaning is necessary? After all, Rule 106 has been in effect since 1922—a period of 40 years.

4. Again, since Rule 106 is a system rule, why would a special local understanding be necessary at the carrier's Kirk Yard, Gary, Indiana, terminal?

These questions have never been satisfactorily answered on the property.

IV. Conclusion:

In view of the foregoing, the carrier submits that:

1. The claim is barred because the organization failed to "... exert every reasonable effort ... to settle ..." the dispute when it refused to divulge the facts and/or basis for its claim.

2. The claim presented to the Board is barred for want of jurisdiction because it was not first handled on the property.

3. The claim is barred because it was not "... presented in writing by or on behalf of the employe involved ...".

4. The claim is without merit because neither the controlling Agreement nor a consistent interpretive practice reserves the work of cleaning sandpipes for pipefitters.

In view of the foregoing, the carrier respectfully requests that the claims in this case be 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 waived right of appearance at hearing thereon.

In June 1958 the carrier abolished all Pipefitter positions at the Round House at East Joliet, Illinois, asserting that their work would be performed by Pipefitters from the nearby Locomotive Shop.

The resultant grievance brought forth a joint work check by the parties in November 1959. In December 1959, two Pipefitters' positions were restored at the Round House.

The Organization claimed that Pipefitters' positions were restored at the Round House for the purpose of "cleaning and repairing sand pipes". The carrier, on the other hand, asserted that Pipefitters were used at the Round House from December 1959 to July 1960 to install modern sand traps and not for the purpose of "cleaning and repairing sand pipes".

On July 18, 1960, the carrier again abolished the Pipefitters' positions at the Round House and again asserted that Pipefitters, when needed, would be called from the Locomotive Shop.

The Organization asserts that since July 18, 1960, the carrier has not called Pipefitters from the Locomotive Shop to the Round House for the purpose of cleaning sand pipes—except on rare occasions.

The Organization contends that work which is contractually Pipefitters' work is being assigned to Machinists; and that "this work has been done by the pipefitters in Joliet exclusively ever since the 'J' purchased diesels".

The carrier's position is that:

1. The claim is barred because the Organization failed to "... exert every reasonable effort ... to settle ..." the dispute when it refused to divulge the facts and/or basis for its claim.
2. The claim presented to the Board is barred for want of jurisdiction because it was not first handled on the property.
3. The claim is barred because it was not "... presented in writing by or on behalf of the employe involved ..."
4. The claim is without merit because neither the controlling Agreement nor a consistent interpretative practice reserves the work of cleaning sand pipes for pipefitters.

The Organization states that the pertinent provisions of the rules cited below establish its contractual right to the work in question:

"Rule 30. None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."

"Rule 106. Sheet-metal workers' work shall consist of tining, copper-smithing and pipe-fitting in shops, yards, buildings on passenger coaches and engines of all kinds, the building, erecting, assembling, installing, dismantling (for repairs only), and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black planished, pickled and galvanized iron of 10 gauge and lighter (present practice between sheet-metal workers and boilermakers to continue relative to gauge of iron), including brazing, soldering, tinning, leading, and babbiting (except car and tender truck journal bearings), the

bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes; the operation of babbitt fires (in connection with sheet-metal workers' work); 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.

"In running repairs, other mechanics than sheet-metal workers may remove and replace jackets, and connect and disconnect pipes where no repairs are necessary to the jackets or pipes in question."

This case is considerably complicated by several facts.

First—the wording and the scope of the claim was changed as it was progressed on the property. For example—in the initial stages the claim referred to **cleaning sand pipes**, but in the latter stages the claim referred to "the work of maintaining sanders on locomotives". (Emphasis ours).

It might be argued that there is little difference in the meaning of the words "cleaning" and "maintaining", but even a little difference can be significant. "Maintaining sanders on locomotives", in fact, can and undoubtedly does include "cleaning sand pipes". On the other hand, "cleaning sand pipes" is only one phase of maintenance, and cannot, therefore, be used interchangeably with "maintaining sanders on locomotives".

Another complicating factor arises from the conflicting representation of background data. For example—the Organization contends cleaning of sand pipes is the work of Pipefitters; whereas the Carrier contends that that is not so and asserts that the Carrier does not recognize cleaning sand pipes as exclusively the work of the Pipefitters where no repairs are necessary to the sand pipes.

In answer to the latter statement, an Organization Representative on the property stated: "This statement seems confusing to us because if no repairs were necessary, the sand pipes would not be cleaned."

To a lay person, however, it would seem quite possible that sand pipes could be cleaned without being repaired and vice versa could be repaired without being cleaned.

Still another complication consists of contradictory statements in the Organization's Exhibit D from which pertinent portions are quoted below:

"The Carrier then assigned two pipe fitters . . . to clean sand pipes **exclusively**." (Emphasis ours.)

This statement is immediately contradicted by the following sentence:

"The pipefitters were also instructed to change sand traps."

This case is further complicated by the Organization's apparent acceptance—from December 1959 to July 18, 1960—of only five of the twenty-one weekly shifts. This acceptance seems entirely inconsistent with the Organization's instant claim.

Because of conflicting and contradictory statements on basic background data, it is necessary to turn to the controlling Labor Agreement in an attempt to resolve the differences between the parties.

The rules, *supra*, on which the Organization relies are system-wide rules and, accordingly, must have a uniform, consistent and system-wide application. However, the Organization's testimony pertains solely to the Pipefitters

cleaning and/or maintaining sand pipes at the Carrier's Round House at East Joliet, Illinois.

If the work of cleaning sand pipes at the East Joliet Round House is reserved solely to the Pipefitters' Craft—then it logically must follow that, in the absence of any contrary agreement, all such work in all Carrier Round Houses and Engine Terminals must also belong to the Pipefitters' Craft.

However, according to the record, only at the Carrier's facilities at East Joliet and Kirk Yard (Gary, Indiana) do Pipefitters perform the work of cleaning sand pipes.

At four other Carrier facilities the daily engine work load is as follows:

South Chicago, Illinois	50 engines dispatched per day
Waukegan, Illinois	15 engines dispatched per day
Gary Mill, Indiana	80 engines dispatched per day
Whiting, Indiana	8 engines dispatched per day

It is obvious that there must be considerable cleaning of sand pipes at the Carrier's four facilities mentioned above; and it is equally obvious that the cleaning of sand pipes is being done by other than Pipefitters at these facilities. How then can it be claimed that this work is reserved solely to Pipefitters?

Accordingly, the Board must deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June, 1963.

LABOR MEMBERS DISSENT TO AWARD NO. 4219

This Board's authority is to adjust the dispute before it in accordance with the controlling agreement.

The point involved here is East Joliet, Illinois, and any alleged activities or violations of the agreement at other points involving a different set of facts and employes, etc. is not relevant to the instant dispute. The logic of ONE IS INNOCENT OF WRONG DOING UNTIL OTHERS COMMITTING THE SAME WRONG ARE APPREHENDED, should have fallen for lack of merit.

This case was not decided on the actual facts relating to East Joliet nor the agreement controlling in this dispute.

The majority is in gross error in their findings.

We dissent.

C. E. Bagwell
R. E. Stenzinger
T. E. Losey
E. J. McDermott
James B. Zink