Award No. 4253
Docket No. 4241
2-EJ&E-SM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

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

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, the Carrier improperly assigned other than Sheet Metal Workers to remove, repair and install nineteen 24 gauge metal ventilators in the roof of Building No. 115 between September 9 and September 22, 1960.

2. That, accordingly, the Carrier be ordered to additionally compensate Sheet Metal Workers Earl Rogers, P. J. Hartney and L. O'Day for sixteen (16) hours each at the applicable rate, account the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: The Elgin, Joliet and Eastern Railway Co., hereinafter referred to as the carrier, maintains at East Joliet, Illinois, maintenance shops and related buildings for the repair and service of its equipment.

Sheet Metal Workers Earl Rogers, P. J. Hartney and L. O'Day, hereinafter referred to as the claimants, are regularly employed by the carrier at East Joliet, Illinois as sheet metal workers to perform sheet metal workers' work.

During the period September 9 to September 22, 1960, carrier assigned maintenance of way employes to remove, repair and re-install nineteen (19) 24 gauge metal ventilators on the roof of Building No. 115. The ventilators in point are approximately 12 inches in diameter and two feet in height. The repair work involved consisted of cutting and fabricating strips of galvanized 10 gauge metal and riveting same to the base of the ventilators.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier all of whom have declined to make satisfactory adjustment.

Considering these facts, the carrier was quite reluctant to accept General Chairman Pearson's claim that the sheet metal workers and the maintenance of way employes were "completely agreed" as to the definition of the term "flashing". Incidentally, the organization (sheet metal workers) stated in conference on May 8, 1961 that that case (BJ-4-59) should not have been paid anyway because ". . . it was only a small part of Mr. Pearson's job and came under the incidental clause in the November 8, 1939 Agreement."

CONCLUSION:

The carrier was not convinced then, and is not convinced now, that the simple cutting of these 8" x 34" rectangular strips of metal and the installation over the existing flashing at the bases of the ventilators constituted "fabricating" as the organization contends. Neither was the carrier convinced that the removal and reinstallation of the subject ventilators by maintenance of way forces constituted a violation of the sheet metal workers' agreement since that work was performed as an incidental and integral part of the task of renewing the roof. Nevertheless, the carrier, during final conference on the property, offered to settle the issue on a **compromise and/or adjustment basis** "to get the claim behind us" if the organization would state clearly the **exact** basis for its claim and, after considering the carrier's position, reduce the liability to some figure considerably less than 48 hours. The carrier was not willing to pay a claim for 48 hours. The carrier, likewise, was not willing to pay **any** claim unless the organization agreed that the subject metal strips were "flashing". To pay the claim, considering all of the discussion that accompanied the claim, would be inviting a jurisdictional dispute between the sheet metal workers' organization and the maintenance of way employes' organization in all future instances where "flashing" is used. The organization steadfastly refused to admit that this was flashing and, in addition refused to alter, amend or clarify its claim further. Accordingly, the carrier was forced to decline it.

In view of the foregoing, the carrier respectfully requests that the claim 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.

Between June 15 and December 21, 1960, Carrier's maintenance-of-way employes removed the waterproofing material from the roof of its building 115 at East Joliet Terminal, and renewed the sub-sheeting, where necessary. After this had been done, insulating material, base and finishing paper and roof coating were applied. In the course of this work the maintenance forces also removed 19 ventilators from the roof. Strips of 24-gauge sheet metal, 8 by 34 inches in size, were placed around and riveted to the bases of these ventilators, after which they were replaced on the renewed roof and the metal strips nailed down.

The Organization has asserted a claim on the theory that the removal, repair and re-installation of said ventilators was work properly belonging to sheet-metal workers. The Carrier says what was involved constituted "flashing" which is exempted from sheet-metal work. But we do not find it necessary to resolve that controversy.

The Tri-Partite Agreement of November 8, 1939, to which both Sheet-metal Workers and the Maintenance-of-Way employes, as well as the Carrier, were parties provides that, "Each department or craft may complete a job, even though it necessitates a small amount of work, in the territory assigned to the other craft or department."

It is undisputed that the maintenance-of-way employes expended 2383 man-hours in repairing the roof, including the work involving the ventilators, and the employes are claiming that 48 hours of this work belonged to them. Without undertaking to define precisely what the phrase means, we think it may be said that 48/2383 of the work performed (or barely 2%) may properly be characterized as, comparatively, "a small amount", within the intent of the quoted Rule. We do not feel that the Carrier was required to interrupt the major activity in which it was engaged to give the claimants the inconsequential benefits that they have demanded. Even if it could be contended that fastening the metal strips around the bases of the venilators was sheet-metal-workers' work, the taking down of the ventilators from the roof pertained to the work of the maintenance-of-way employes under the circumstances.

The claim must be declined on account of failure of proof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June, 1963.

LABOR MEMBERS DISSENT TO AWARD NO. 4253

The majority admits the Maintenance of Way employes performed certain work on building roof ventilators belonging to the sheet metal workers and also admit there is a Tri-Partite Agreement of November 8, 1939, granting the work in this respect to the sheet metal workers, and then places an absurd literal interpretation on a portion of the agreement.

> "The Tri-Partite Agreement of November 8, 1939, to which both Sheet-Metal Workers and the Maintenance-of-Way employes, as well as the Carrier, were parties provides that, '**Each department or craft may complete a job, even though it necessitates a small amount of work, in the territory assigned to the other craft or department.**' " (Emphasis ours)

We point up the record reveals this was not a small case of completing a job, but of starting a complete repair operation of nineteen (19) ventila-

tors at four (4) hours each — See: Seventh (7th) of page 6, Employes' Rebuttal for reasons of conservative time claimed. Further, there is nothing in the Tri-Partite Agreement which allocates the work on a percentage basis and forty-eight (48) hours of wages lost cannot be considered "a small amount." With the clear record before us and the factual admission by the majority it is unreasonable to state "the claim must be declined account of failure of proof."

Based on the agreement and record as a whole this award should have been in the affirmative.

We dissent.

C. E. Bagwell

R. E. Stenzinger

T. E. Losey

E. J. McDermott

James B. Zink