Award No. 4368
Docket No. 4344
2-CMStP&P-SM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company assigned work from the Sheet Metal Workers to another Craft, in violation of the Agreement.

2. That, accordingly, the Carrier be ordered to pay:

Sheet Metal Worker Welders

Anthony Radtke	64 hours at the hourly rate of $2.698
Lott Wimer	64 hours at the hourly rate of $2.698
Francis Fritsch	64 hours at the hourly rate of $2.698
Harold Krumnow	64 hours at the hourly rate of $2.698

Sheet Metal Workers

Frank Basta	40 hours at the hourly rate of $2.638
Walter Pawlak	40 hours at the hourly rate of $2.638
Harold McLaughlin	32 hours at the hourly rate of $2.638
Edwin Schmeckel	32 hours at the hourly rate of $2.638

EMPLOYES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier, maintains a shop at Milwaukee, Wisconsin, where sheet metal workers are employed, among whom are those referred to in part 2 of the claim, hereinafter referred to as the claimants.

In October, 1960, the carrier began the work of building 28 car brass journal storage bins, and, in accordance with the agreement, assigned the work to its sheet metal workers.

/s/ Peter J. Moch
General Chairman
Brotherhood Railway
Carmen of America

Chicago, Illinois
June 8th, 1949"

If by the instant claim the sheet metal workers organization is laying claim to work in connection with 3/16" or 7 gauge metal then there is involved a jurisdictional question which must be resolved between the blacksmith's craft and the sheet metal workers organization in accordance with the provisions of aforequoted memorandum of agreement dated June 8, 1949.

The carrier reiterates that the gauge of metal to be used or not used, as the case may be, in any and all projects is a carrier prerogative and not that of the sheet metal workers organization and if the carrier sees fit to change the gauge of metal being used in a project, for any reason whatsoever inclusive of the unavailability of a certain gauge of metal such as in the instant case, that too is a Carrier prerogative and not that of the sheet metal workers organization.

The basis for the organization's claim, i.e., "That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company assigned work from the Sheet Metal Workers to another Craft, in violation of the Agreement." is wholly unfounded because the work with which we are here concerned involves the handling of 3/16" or 7 gauge metal and said work does not belong to the sheet metal workers organization under their classification of work rule, which gives to them work in connection with material 10 gauge and lighter (7 gauge metal is heavier than 10 gauge), nor by practice, but instead work involving 3/16" or 7 gauge metal belongs to the blacksmith's craft and their use in connection therewith in the instant case was, therefore, entirely proper.

Your board will understand that as the employes are asking you to sustain their position in this case they are, in effect, asking your board to modify, by board award, their classification of work rule to the extent of encroaching upon the rights of another craft. Many board awards have held that, in accordance with the provisions of the Railway Labor Act, the authority of your board extends only to the rendering of an award based on existing rules and your board is without authority to render an award having the effect of writing new rules or amending existing rules. The material which the carrier used and for which claims have been made, was a gauge of material outside the scope of the sheet metal workers' classification of work rule. The claimant sheet metal workers, therefore, were not entitled to the work claimed as it belonged to another craft and the claim cannot properly be sustained.

The carrier submits that there is absolutely no basis for the instant claim and we respectfully request that it 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.

Claimants are Sheet Metal Workers employed at Carrier's Milwaukee shops.

In October 1960, the Carrier began buliding 28 journal bearing storage skids at the Milwaukee shops for use at its car repair facility at Bensenville, Ill.

We find the following facts:

1. All of the skid, except the base, was to be made of 1/8" or 11 gauge metal.

2. Under the controlling agreement, this type of work when performed with 10 gauge metal or lighter comes within the Sheet Metal Workers' Classification of Work Rule (Rule 77).

3. The larger the gauge number, the lighter the metal.

4. After 14 of the 28 skids were completed, the Carrier ran out of its supply of 1/8" metal, and to complete the job on time, it substituted 3/16" or 7 gauge metal, and assigned employes of the Blacksmith Craft to fabricate the remaining skids from the 3/16" metal.

It is the Carrier's position that the change of metal weight is its managerial prerogative, and 3/16" metal being heavier than 10 gauge, the work on it belonged to the Blacksmiths and not to the Sheet Metal Workers.

The Organization does not argue that the Carrier could not change the gauge of the metal, nor does it ascribe any improper motive to the Carrier in making the change. It relies upon the Memorandum of Agreement between the Carrier and System Federation No. 76 dated April 8, 1948 and attached as Exhibit "D" to the Employes' submission, in alleging that the work was improperly taken from Claimants and given to the Blacksmiths.

Briefly, this Memorandum of Agreement contemplates that no work shall be transferred from one craft to another until the crafts concerned come to an agreement concerning such transfer and that agreement is submitted to and approved by Management.

It is the Organization's position, that this procedure has not been followed here, and therefore the work was improperly transferred.

This would be true if the work involved on the last 14 skids was the same work as was performed on the first 14 skids, and remained within the Sheet Metal Workers' Classification of Work Rule. But the change in the gauge of the metal took it out of that classification, and in effect, made it different work, which no longer belonged to the Sheet Metal Workers, and therefore the Memorandum of Agreement of April 8, 1948 has no application here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December, 1963.

LABOR MEMBERS' DISSENT TO AWARD 4368

It is inconceivable that the majority could follow the facts of this case step by step and then in their concluding statement of this award depart so completely from the issue before them when they stated:

> "This would be true if the work involved on the last 14 skids was the same work as was performed on the first 14 skids, and remained within the Sheet Metal Workers Classification of Work Rule. But the change in the gauge of the metal took it out of that classification, and in effect, made it different work, which no longer belonged to the Sheet Metal Workers, and therefore the Memorandum of Agreement of April 8, 1948 has no application here."

This conclusion is in gross error and is a complete departure from the facts or the issue in dispute and that is that the Carrier failed to comply with the April 8, 1948 Memorandum of Agreement for the transfer of work from one craft to another. The dispute before the Division, as previously stated, was the Carrier's failure to apply the aforementioned memorandum. There was no gauge of metal or jurisdictional dispute. Therefore, it should not have had any persuasive affect on the majority's conclusion.

Further, the concluding statement in pertinent part:

> "But the change in the gauge of the metal took it out of that classification, and in effect, made it different work, * * * and therefore the Memorandum of Agreement of April 8, 1948 has no application here."

is entirely without foundation in face of the clear and concise language of the April 8, 1948 Agreement which states in pertinent part:

> "**That no work shall be transferred** from one craft to another until the crafts concerned come to an agreement concerning such transfer."

It is admitted, by the majority's statement, that work existed, however they contend it to be different work. Here we do not agree that it is different work because skids were still being manufactured. The agreement also states clearly:

> "It is to be understood that each craft will continue to perform each item of work they have been performing * * *."

When one looks to the language of the Memorandum of Agreement it contemplates that no work shall be transferred from one craft to another. This certainly is cover-all language to circumscribe the work admitted by the majority, and change in 1/16" thickness should not render the Memorandum of Agreement inoperative.

It is admitted that work did exist, work was transferred by the Carrier and it is clear that the vehicle for the disposition of work assignments is the April 8, 1948 Memorandum and it is further admitted by the majority that the Carrier did not use or comply with this Agreement. Therefore, this claim should have been sustained.

In view of the above, we are compelled to dissent.

R. E. Stenzinger

C. E. Bagwell

E. J. McDermott

T. E. Losey

James B. Zink