



Award No. 4789
Docket No. 4692
2-D&RGW-SM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That the rules of the current agreement are being violated, especially Rule 77 and 28 (a) at the North Yard, Denver Colo.
2. That, in the process of this claim, the Carrier has further violated the rules of the Current Agreement, especially Rule 21 Paragraph 1(a) and Rule 31 Paragraph 2.
3. That accordingly, the Carrier be ordered to establish a position of Sheet Metal Worker at North Yard, Denver, Colorado.
4. That accordingly, the Carrier be ordered to compensate Sheet Metal Worker K. C. Flansburg eight (8) hours per day for each day starting sixty (60) days prior to January 3, 1963 and continuing until the date position of Sheet Metal Worker is established at North Yard, Denver, Colorado.

EMPLOYES' STATEMENT OF FACTS: The Denver and Rio Grande Western Railroad Company, hereinafter referred to as the carrier, maintains at Denver, Colorado, two facilities for the inspection, servicing and repairing of locomotives, namely, Burnham Shops and North Yard. Burnham Shops is the main shop and furnishes the supervision and employees for the North Yard operation. Employees of all six shop crafts are regularly employed at Burnham Shops, and some of the crafts other than sheet metal workers have employees regularly assigned to the North Yard facility from Burnham by bulletin. On shifts where employees of these crafts are not regularly assigned by bulletin or when additional employees are needed, carrier transports employees from Burnham Shops to North Yard by bus to perform the work of their craft. In the case of sheet metal workers, carrier does not have a position regularly assigned to North Yard to perform sheet metal workers' work and neither does it transport sheet metal workers from

ham Shops. He was on duty and under pay at the time that the sheet metal workers' organization claim that a position should be assigned at North Yard. All sheet metal workers were working and drawing full time. As pointed out in carrier's denial of the claim, without prejudice to the fact that a new position was not required under the agreement rules, no work could have been performed by the claimant and there was no loss in pay suffered by Mr. Flansburg. In addition to Award 10963 cited in carrier's letter denying this claim, see Second Division Award 4086 and Award 4083. Award 4083 holds:

"The record does not show that these claimants sustained pecuniary damage because of the violation. It shows that they worked full time on that day, and does not indicate that overtime would have been necessary or that the claimants would have been entitled to such overtime. Claim 2 should therefore be denied."

The employes have completely failed to support their claim with any evidence that any exclusive work of sheet metal workers or otherwise is being performed by any other craft. Claim must be dismissed for lack of evidence and failure to carry the burden of proof.

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.

The basic issue is whether North Yard is a separate point from Burnham Shop in the application of Rule 28 (c). It is clear that, in practice, the parties have treated it as such since 1949, as no sheet metal worker has been assigned there since that year. Under the circumstances shown we find that North Yard is a separate point for the application of Rule 28 (c), so the claim is not sustainable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1965.

LABOR MEMBERS' DISSENT TO AWARD 4789

The majority, by concurring with the referee's statement in the first paragraph of the findings of Award 4789:

"The basic issue is whether North Yard is a separate point from Burnham Shop in the application of Rule 28(c). It is clear that, in practice, the parties have treated it as such since 1949, as no sheet metal worker has been assigned there since that year. Under the circumstances shown we find that North Yard is a separate point for the application of Rule 28(c), so the claim is not sustainable."

is certainly a display of bold inadvertence to the facts of the record before us.

The basis issues before this division are clear and are projected in the dispute and claim of the employees. The seniority of all mechanics assigned on a regular or casual basis in the North Yard are established at the Burnham Shops.

We find the record replete with employees remedial action sought as well as carrier's statements dealing with their contentions for denial both on the property and in correspondence with the various representatives of the sheet metal workers craft, as well as in their submission and rebuttal statements to this case. For example, page 20 of carrier's submission, which is a letter from the local chairman to Mr. P. D. Starr, Master Mechanic, Colorado Division, Burnham Shops, in pertinent part:

"Rule 28, sub-paragraph C. The North Yard is an integral part of the Burnham forces as all employees are from Burnham, and Sheet Metal Workers at Burnham can be bussed to the North Yard or can be assigned by bulletin to do the daily work, as previously stated."

Also when we turn to page 30 of the carrier's submission we find the carrier's own statement:

"The Carrier maintains only one Machinist Inspector, one Electrician and one Machinist Helper at North Yard on the day shift and one Machinist Inspector and one Electrician on the second shift. **Mechanics of other crafts including Sheet Metal Workers go from Burnham Shops to North Yard to perform work as needed on the first and second shifts.** There is no position assigned on third shift at North Yard to cover locomotive repairs. Mechanics assigned at Burnham Shops go to North Yard to perform work as needed on the third shift."

This carrier's admission should be sufficient evidence alone to the fact that no seniority argument squares with the true issues before this division.

It is clear that other employees of the shop crafts are performing work, including a certain amount of sheet metal work at the North Yard, and that these employees hold seniority at the Burnham Shops, not the North Yard, and that the sheet metal workers in this dispute were merely requesting the same consideration under the agreement rules as is extended to the other crafts from the Burnham Shops.

Further, the majority failed to give prudent attention to this question and it is also evident that they failed to deal with the procedural defect

charged by the employes in part two of the dispute and claim. Such failure presents this award as a nullity and for these reasons we are compelled to dissent.

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