Award No. 4875
Docket No. 4829
2-SP(PL)-SM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Sheet Metal Workers)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current collective Agreement it was improper to assign others than Sheetmetal Workers to fabricate safety guard rails located in the erecting Shop area at the Carrier's Sacramento, California general shops.

2. That Sheetmetal Workers John Walker and Roy Newton each be additionally compensated in the amount of four (4) hours at their established rates for this violation.

EMPLOYES STATEMENT OF FACTS: On or about December 10, 1963 the Southern Pacific Company (hereinafter referred to as "the Carrier") instructed employes of its bridge and building forces to fabricate and install a Safety guard rail for a Herman Stone Bore Machine located in the erecting shop area of their Sacramento, California General Shops. This safety guard rail was fabricated from one inch (1") pipe approximately forty six feet (46') long.

So your honorable board may be crystal clear on the issues involved in this claim the employes offer the following for your information and guidance:

At predetermined points along this guard rail upright posts were welded in so the entire guard rail could be set in concrete and would be a fixed rail around the machine. The actual setting of the posts in concrete is not a part of the dispute and is simply referred to in order that you may have a clear picture of the claim of the employes.

There is no dispute, insofar as the organization is concerned, that the work in question has always previously been performed by Sheetmetal Workers at the Sacramento, California Shops. Local Chairman La Franco included Exhibits in his original claim to the carriers' Mr. Oberkamp. However, neither Mr. Oberkamp nor Mr. Nelson attempted to deny the validity of the exhibits but rather chose to involve general denial statements based on nothing but their own allegations. The files will further indicate no where in correspondence nor conferences has any carrier officer shown any proof whatever that anyone other than sheetmetal workers performed the work in dispute. They have not

acknowledge the parenthetical clause included in Rule 77, supra, and have endeavored to establish merit for the instant claim on the basis of past practice solely at the point involved. However, the principle of past practice does not have application in the instant dispute for the simple reason that the provisions of Rule 77, supra, are clear and unambiguous and specifically exempt work performed by MofW Department employes, which work is specifically involved in this dispute.

Without prejudice to the foregoing, carrier does not deny that some work referred to in signed statements accompanying petitioner's Local Chairman's letter of January 29, 1964, was performed by sheet metal workers at Sacramento general shops. The work referred to in those statements was resorted to when necessary during war years and, as stated hereinabove, involved work traditionally performed by MofW Department employes many years prior thereto. The fact that such practice was continued in part at Sacramento general shops does not establish merit to the instant claim for exclusive right to the work here in dispute. Moreover, the continuation of that practice did not change any provision of memorandum "A", quoted supra, which has application only to signatory crafts. The Brotherhood of Maintenance of Way Employes was not a party thereto.

In support of carrier's position in this case that the Sheet Metal Workers' craft has not enjoyed an exclusive right to the work here contended for at the point involved, carrier directs attention to letter dated April 30, 1964, specifically to similar claims referred to therein. The latter claim involved pipe work performed by employes of the boilermakers' craft and the former claim involved work performed by MofW department employes. In the latter claim attention of Petitioner's former general Chairman was directed to the specific exception in Rule 77 to work performed by MofW department employes. Carrier's decision in that claim is now final and binding; therefore, carrier asserts that the question now before this tribunal was settled by the parties heretofore and petitioner is estopped to further progress the identical settled issue.

In view of the foregoing, it is abundantly clear that the petitioner, in pursuing the instant claim, is attempting to secure through an award of this division a new rule over and above that agreed to by the parties. The principle is well established that it is not the function of this board to modify an existing rule or supply a new rule where none exists. The remedy here sought is provided by Section 6 of the Railway Labor Act.

It is a principle too well established by all divisions of this board to warrant citation that when a disputed contention is made for work to the exclusion of all others based on local practice, the burden of proving the disputed contention rests upon the party who relies upon it to show that the practice is exclusive. This the Petitioner has failed to do, and consistent with those awards the instant claim must fail.

CONCLUSION:

Carrier asserts the instant claim is entirely lacking in agreement or other support and requests 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 were given due notice of hearing thereon.

In the dispute here, the Organization makes claim for 4 hours' pay for each of the named employes, contending that the work required was assigned to Maintenance of Way Department employes. The work required was the fabrication of safety guard railing being installed at the Diesel Locomotive-Erecting Shop, at Sacramento, California, December 10, 1963.

It has been shown that the work so performed by M. W. employes, is similar to work performed by such employes, as well as Sheet Metal Workers who also have performed such services on this property for Carrier.

Carrier relies upon the provision of Rule No. 77—Classification of Work. It will be noted that said rule excepts work performed by Maintenance of Way Department employes.

A reading of Memorandum "A" in the Agreement effective here, and dated April 17, 1942, is applicable here, and agreed to by this Organization.

In view of the foregoing we conclude that the Organization here, does not have the exclusive right to perform the work as alleged here.

The claims here do not merit a sustaining award.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May, 1966.

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