

Award No. 5151

Docket No. 4952

2-IC-SM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO (Sheet Metal Workers)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Illinois Central Railroad acted improperly by taking work from water service mechanics and assigning it to another craft, in violation of existing practices and Agreements.

2. That the water service mechanics named below be compensated, at penalty rate, for each day worked by Michele Fusco, Motor Car Repairman Helper, from August 15, 1963, until claim is satisfactorily disposed of.

H. C. Schulz	H. M. Wiltsey
Eugene Naas	W. C. Burrright
H. D. Piper	H. R. Pavel
Glen Buss	J. Privette
J. M. Roham	W. J. Conti
J. Demkowicz	E. Gorecki
B. Westlake	F. H. Forbes
A. H. Bush	J. Fransen
C. E. Lybarger	M. Parisi
F. M. Huemmer	W. H. Philpot
J. V. DeRobertis	C. C. Reynolds
S. Moreci	V. DiMenco

EMPLOYEES' STATEMENT OF FACTS: The Illinois Central Railroad, hereinafter referred to as the carrier, maintains a shop in Chicago, Illinois, on 26th Street. This shop is used for both repairing roadway equipment and as headquarters for the water service department.

Prior to the issue here involved, the repairing of all roadway equipment has always been done by water service repairmen in Chicago, represented by the sheet metal workers' organization.

duty and under pay during the claim period. There is no evidence that, had Mr. Fusco not been used, any claimant would have earned more pay than he did earn.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 the consideration of this dispute, we find it averred by Carrier at the outset that the claim is barred by Article V of the Agreement of August 21, 1954, inasmuch as the action taken by Carrier concerning which complaint is made occurred May 16, 1963, and the instant claim was not filed until October 14, 1963. Countering this averment the Organization contends that here the dispute concerns a continuing claim within the meaning of Article V. However, in the view we take of the merits of this dispute, it is unnecessary to examine and decide the time limit defect asserted by Carrier.

Although Employees' claim does not specify what type of work was taken "from water service mechanics" and assigned to another craft, it may be inferred that it was work such as would be performed by a Motor Car Repairman Helper. Then later from Employees' Statement of Facts, it develops that such was the case and that an employee named Michele Fusco, previously classified and working as a "Water Service Repairmen Helper" within the Sheet Metal Workers Organization at Carrier's Twenty-Sixth Street shop in Chicago, had been transferred to "Motor Car Repairman Helper" with a new craft designation in the Department of Maintenance of Way and had continued the same work as formerly at the same location. The Employees claim that this was "a violation of existing practices and Agreements."

While the record here would indicate that in recent years a considerable amount of the roadway equipment repair work at Carrier's Twenty-Sixth Street shop had been performed by water service repairmen of Claimant's Organization, nevertheless this work had not been exclusively accomplished by said Sheet Metal Workers at said shop, whereas at most points over Carrier's system it had been performed by employees of the Maintenance of Way craft, something which was readily admitted by General Chairman King of the Sheet Metal Workers International Association in his letter, dated April 6, 1965, (Carrier's Exhibit O), wherein he said: "We do not deny that at most points this is true." And it should be borne in mind, as stated in Second Division Award 4971, . . . "the application of the general provisions of an Agreement are system-wide except as otherwise provided." See also Third Division Award 7031 cited in Second Division Award 2255.

Rule 57 of the applicable Agreement cited by Employees says nothing which in any way covers repair of roadway equipment, unless, as Employees

seem to say, such work can be included in the final words: "and all other work generally recognized as water service repairmen's work." To this we cannot subscribe. But further, Claimants insist, and appear to place paramount reliance upon the allegation, that Carrier has assigned the maintenance and repair of roadway equipment at said Twenty-Sixth Street shop to Water Service employes throughout the past many years and thereby has established an accepted practice. This, the Claimants have the burden of proving. As was said in Second Division Award 4990: "the Petitioner has the burden of proving the work complained of was exclusively assigned to or reserved to the Claimants by Agreement or by custom, tradition and practice." A careful examination of the evidence in the record does not permit us to say that Claimants have sustained this burden as to such work at said Twenty-Sixth Street Shop and further we find that it cannot be said as to other points throughout Carrier's system. See Second Division Award 4971.

In our considered opinion, we do not believe this claim can be maintained. It should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1967.