



Award No. 5339

Docket No. 5141

2-CVt-BM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 92, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Boilermakers)**

CENTRAL VERMONT RAILWAY, INC.

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Central Vermont Railway, Inc., hereinafter referred to as the Carrier, violated the current agreement when Maintenance of Way Forces were allowed to fabricate, by the laying out and fitting up of sheet iron or sheet steel work benches, along with the welding and finishing of the work benches.

2. That Boilermakers W. N. Anstey, B. R. Fregeau and B. A. LeFleur are entitled to be compensated in the amount of time, equally distributed among them, that was required to fabricate, weld and finish by grinding and application of the casters, vice and other appurtenances.

EMPLOYEES' STATEMENT OF FACTS: The Central of Vermont Railway, Inc., hereinafter referred to as the Carrier, maintains at St. Albans, Vermont, Mechanical Shops for the building, maintaining and repairing of equipment used in all departments of the Carrier. Carrier's Maintenance of Way Department's headquarters are also located at St. Albans, Vermont.

In the early part of 1965, Carrier assigned Maintenance of Way Employees to lay out, fabricate, weld and finish three (3) portable tool boxes approximately 60-in. by 30-in. by 40-in. high from 10 and 12 gauge sheet iron reinforced with angle iron. Said boxes contained shelves, drawers and doors with a ¼ inch top work surface, with vice fastened thereto, and were mounted on wheels for easy movement.

The employees named in Part 2 of the Employees' Statement of Claim above, hereinafter referred to as claimants, are regularly employed and assigned as boilermakers in Carrier's shop at St. Albans, Vermont, and were available and qualified to lay out, fabricate, weld and finish the portable tool boxes.

Motive Power and Car Equipment concerning the jurisdiction of the employees in the two departments; that is, the Maintenance of Way and the Maintenance of Equipment. The pertinent part reads as follows:

"We feel the distinction of the two departments (Maintenance of Way and Maintenance of Equipment) are pretty well defined. The Maintenance of Equipment means just that. The dictionary defines equipment as rolling stock and apparatus for operating as distinguished from trackage or buildings. Maintenance of Equipment must then necessarily be that which is necessary to build, repair or maintain equipment or apparatus for operating the various types of equipment in the various departments."

In Committee's letter of July 15, 1965 (Exhibit E), they make mention of such work belonging to mechanics. They then defined mechanics to mean and include electricians, boilermakers, carmen, blacksmiths, etc. The Carrier pointed out to the Committee the exceptions contained in Rule 42 of their Boilermakers' classification of work rule which reads in part as follows:

(EXHIBIT D.)

"Boilermakers' work shall consist of, etc. * * * except where other mechanics perform this work."

Carrier pointed out that here again an item appears which contradicts their contention that this was exclusively Boilermakers' work. Second Division Award 4016, cited by the petitioner in support of their claim, is not applicable to the instant dispute. As pointed out by the Carrier, Award 4016 was decided because the "tank" was named in the classification rule in effect on the property involved.

Correspondence of April 13, 1965 and May 20, 1965 (Carrier's Exhibits A and B), are respectfully attached.

All data contained in this submission has been the subject of discussion in conference between the parties.

(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.

The material facts giving rise to this claim are not in dispute. An employee of the Maintenance of Way Department assembled one, and partially

assembled two, portable tool boxes made of 1/8-inch steel plate, tack welded and framed of angle iron. These boxes or benches when completed rest upon wheels or dollies, and are about 60-in. by 30-in. by 40-in. in dimension. They are used to contain tools and parts used by track welding forces in repair and maintenance work.

The claim is based upon the allegation that the fabrication of the tool boxes described above is work belonging by contract to the Boilermaker craft; that, therefore, its performance by a Maintenance of Way employe violated the Boilermakers' Agreement.

The Employes cite and rely upon the following schedule rules:

Rule 42, Classification of Work Rule, which in pertinent part reads:

"Boilermakers' work shall consist of * * * laying out and fitting up any sheet iron or sheet-steel work made of 16 gauge or heavier * * * I-beam, channel iron, angle iron and T-iron work; * * * oxy-acetylene, thermit and electric welding on work generally recognized as boilermakers' work."

Paragraphs (a) and (c) of Rule 20 which provide:

"(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, * * *

(c) In compliance with the special rules included in this agreement, none but mechanics and their apprentices in their respective crafts shall operate oxyacetylene, thermit or electric welders. Where oxyacetylene or other welding processes are used, each craft shall perform the work which was generally recognized as work belonging to that craft prior to the introduction of such processes,"

and the scope rule reading:

"It is understood that this agreement shall apply to those who perform the work specified in this agreement in the maintenance of equipment department and all other departments of this system wherein work covered by this agreement is performed."

The Employes also refer the Board to Second Division Awards 1656 and 4016 as sustaining their contentions and position in this dispute.

It is the Carrier's position that the work of assembling the portable boxes is not reserved exclusively to the Boilermakers and to so find would make the Carrier liable to a claim to that work from the Maintenance of Way employes. Carrier emphasizes that the work of assembling portable boxes or work benches is not specified as coming within Rule 42, the Boilermakers' Classification of Work Rule, although the scope rule explicitly says that the agreement applies to those who perform work specified in that agreement. Moreover, the Carrier asserts, Rule 42 contains the provision "... except where other mechanics perform this work;" and that, therefore, there is no exclusive reservation to the Boilermakers under the Agreement of the work here involved.

The sole issue here is whether or not the work involved falls within the scope and classification rules of the Shop Crafts agreement applicable to the Boilermakers' Craft.

Rule 42 classifies the work reserved to Boilermakers for exclusive performance by that class or craft of employees. Nowhere in that rule, however, is there any mention of portable tool boxes or benches, although many other types and kinds of equipment are specified in great detail. Moreover, Boilermakers' work of "laying out and fitting up any sheet-iron or sheet-steel work" is clearly restricted to 16 gauge or heavier metal. There is no dispute that the sheet metal used in the assembling of the tool boxes was of less than 16 gauge. Welding is restricted to that " . . . generally recognized as boilermakers' work; . . .". The evidence is insufficient to support a finding that by practice, custom and usage, the work here involved had generally been recognized as work belonging to Boilermakers. Moreover, the language of the scope rule explicitly states that the work reserved to covered employees is that specified in the agreement and, as has been said, there is no specific classification in the agreement of the work here in dispute.

In view of the foregoing, the Board finds no rule support for the claim. It will, therefore, be denied.

The awards cited and relied upon by the Employees are distinguishable on the facts. In Award 1656, the Board held that the Carmen's classification rule was intended to cover all painters' work not generally recognized as Bridge and Building Department work. In Award 4016, the Board decided that Rule 42 reserved the work of disassembling and reassembling a water tank to boilermakers on the basic ground that such work was specifically classified thereunder.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1968.