

Award No. 5830

Docket No. 5659

2-WP-SM- '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 117, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Sheet Metal Workers)**

THE WESTERN PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement the Carrier improperly assigned other than Sheet Metal Workers to make repairs to steam pipe underground at store Department Oil House February 2, 1967.
2. That accordingly, the Carrier be ordered to:
 - A. Discontinue the use of employees other than employees of the Sheet Metal Workers to make repairs to steam pipe underground at Store Department.
 - B. That accordingly, the Carrier be ordered to compensate Sheet Metal Worker G. W. Breedlove for eight (8) hours at the regular rate of pay.

EMPLOYEES' STATEMENT OF FACTS: Vernon Johnson, local chairman Sheet Metal Workers' Local #301, was advised that a steam pipe underground at the store department had been repaired by Bridge & Building Department employees who are not Sheet Metal Workers.

For over 25 years the Sheet Metal Workers from Local 301 have done the pipe work underground and overhead at the Western Pacific shops in yards and buildings. That in 1948 steam pipe at west end of erecting shop to car repair sheds was overhead but was taken down and put underground by former sheet metal workers M. Mitts and J. Lee. H. Kiel retired sheet metal worker piped oil refinery plant. Note local chairman V. Johnson's letter and claim to R. E. Schreifer superintendent of shops dated March 13, 1967.

The carrier in addition to employment of craftsmen outside the scope of the above mentioned agreement, likewise regular employed on said Western Pacific hourly rated sheet metal workers for the purpose of performing Sheet Metal Workers' work in shops, yards and buildings as per rule 90 of the agreement hereinafter referred to the carrier's officers, however, in this instance case declined to use sheet metal workers to perform the aforementioned work even though the sheet metal workers performed the exact work on many other occasions, of repairing steam pipes and further to strengthen

Carrier cites as persuasive authority for its position in the instant dispute, Second Division Award 1345 wherein your Board ordered a similar dispute between two crafts disposed of on the basis of an existing oral understanding.

In conclusion carrier asserts (1) the instant dispute involves a jurisdictional issue between the sheet metal workers' international association and the brotherhood of maintenance of way employees; therefore, the brotherhood of maintenance of way employees must be notified and given an opportunity to be present at the hearings; and (2) the work involved was assigned to water service employees under the maintenance of way agreement in accordance with the oral understanding.

Carrier urges that your Board hold the work involved in the instant dispute was properly assigned to water service employees in accordance with an existing understanding and practice and deny the claim presented herein.

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 employees 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.

In 1967 an underground steam pipe located outside of the shop buildings required repairs. Carrier assigned the work in question to Maintenance of Way employees, as a consequence of which the Sheet Metal Workers' organization filed the instant claim contending that the work belonged to members of their craft in accord with their basic Agreement. They cite Rule 90, their Classification of Work Rule, as having been specifically violated, the provisions of which in pertinent part are as follows:

"Sheet Metal Workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards buildings,; the building, erecting, assembling, installing, dismantling and maintaining parts of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of (10) gauge and lighter, including brazing, soldering, tinning, leading and babbiting, the bending, fitting, cutting threading, brazing, connecting and disconnecting of air, water, gas, oil and steampipes;, and all other work generally recognized as Sheet Metal Workers' work."

Carrier alleges that the work in question was performed in accordance with an oral understanding reached by Carrier with the General Chairman of the Sheet Metal Workers Organization in the early 1930's. This was to the effect that sheet metal workers would perform only the pipe work within shop buildings, whereas the balance of pipe work would be performed by the Maintenance of Way employees. To support this position, Carrier has submitted an affidavit and two statements from the former Assistant to the General Manager, the former Chief Mechanical officer and the present Chief Mechanical Officer.

On the other hand, the Organization has submitted various statements from employees indicating that Sheet Metal Workers work consisted of both in-

side and outside work. Since it was the Carrier's position originally that this work belonged to the Maintenance of Way, a letter was sent to that organization advising that this dispute had been submitted to this Board. Hence they were duly notified of the pendency of the instant case and afforded an opportunity to file a Submission in connection therewith. The pertinent portions of the Maintenance of Way Agreement was submitted in evidence and referred to by both parties in their submissions to this Division.

To be sure, the evidence presented in this case is conflicting on the division of work as between the Sheet Metal Workers on one side and the Maintenance of Way on the other. However, the Sheet Metal Workers "Classification of Work" Rule came into existence subsequent to the Maintenance of Way Agreement, which incidentally has a General Type Scope Rule, hence necessitating a preponderance of evidence to show conclusively that the work involved was performed historically, customarily and traditionally by their employees to the complete exclusion of all other employees. We find no such substantial evidence in this record. We do have the affidavit of statements previously referred to by Carrier officers as to the division of work in accord with an alleged oral understanding, but the Classification of Work rule specifically covers the work in question. Whether a Company Official and Union Official can mutually agree to amend a collective bargaining Agreement is a matter of some interest, but one which fortunately we do not have to decide here.

In weighing the evidence, we accord great significance to the written Contract, Rule 90 plus the statements submitted on behalf of the Organization, especially when contrasted with the alleged oral understanding submitted on behalf of the Carrier. We believe the Organization has sustained its position in this case by presenting a preponderance of evidence. We will sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1969.