

Award No. 6049

Docket No. 5903

2-N&W-SM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, other than employees of the Sheet Metal Workers' Craft (B&B Carpenters) were improperly assigned to perform pipe work consisting of cutting, fitting and installing handrail constructed from one and one half (1½) inch pipe in the Machine Shop, Roanoke Shop, Roanoke, Virginia on May 23, 1968.

2. That accordingly, the Carrier be ordered to additionally compensate the following employees of the sheet metal workers' craft in the amount of seventy (70) hours at the time and one half rate, to be equally divided among them for this work.

CLAIMANTS:

J. E. Minnix
C. R. Shifflett
C. L. Minnix, Jr.
E. H. Goad

EMPLOYEES' STATEMENT OF FACTS: At Roanoke, Virginia, the Norfolk and Western Railway Company, hereinafter referred to as the carrier, maintains a shop known as Roanoke Shops, and sheet metal workers (pipefitters) are employed by the Carrier in its Roanoke Shop to perform their work as specified in the Current Agreement. The maintenance, repair and installation of work covered by the agreement has been performed by the pipefitters employed in Roanoke Shop. On May 23, 1968, the carrier assigned the maintenance of way carpenters to cut, fit and install this handrail constructed from one and one half (1½) inch pipe. Immediate protest was made by the local committee, but carrier refused to correct the assignment.

Therefore, claim was filed in writing and has been handled with all officers of the carrier designated to handle such claims, including carrier's

(c) Management has certain rights and prerogatives to manage its affairs when not restricted by the agreement. See Second Division Award 3862.

(d) The claimants all held regular assignments and suffered no loss. See Special Board 570 Awards (No. 3 dissent) and 5, 6, 8, 36, 37, 44, 53, 61, 97, 104 and 105. See also many Second Division Awards.

4. The organization has not and cannot meet the burden of proof that the work herein involved has been exclusively performed, historically, customarily and traditionally, by the sheet metal workers. See Second Division Award No. 5740.

5. Payment of the overtime rate is not justified.

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 Carrier assigned the work of installing a 1½-inch handrail on the roof of a cinder block building to employes of the Maintenance of Way Department. This was done in connection with converting Carrier's diesel maintenance facilities at Roanoke Shops to an assembly-line type of production.

The Employes contend that the work involved is exclusively theirs under Rule No. 84 of the effective Agreement. Rule No. 84 reads:

"Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings, on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling (for repairs only), and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled, and galvanized iron of 10 gauge and lighter (present practice between sheet metal workers and boilermakers to continue relative to gauge of iron), including brazing, soldering, tinning, leading and babbitting (except car and tender truck journal bearings), the bending, fitting, cutting, threading (when men are regularly assigned to operate pipecutting and threading machines), brazing, connecting and disconnecting of air, water, gas, oil and steam pipes, the operation of babbitt fires (in connection with sheet metal workers' work), oxyacetylene, thermit and electric welding, and all other work generally recognized as sheet metal workers' work."

Second Division National Railroad Adjustment Board Award 5951 (Zumas) involved the same parties and Rule.

Award 5951 states:

"Rule 84, relied on by the Organization, is vague and unclear. There is no classification under the rule which covers the work complained of.

The record does disclose, however, that in the past this kind of work had been performed by Maintenance of Way employes. There is no necessity to cite authority for the long standing tenet of this Board that absent a clear and unambiguous rule, past practice governs."

In the claim before the Board the employes have failed to show their right to the work by past practice. We agree with the Referee in Award 5951 when he stated that Rule No. 84 "is vague and unclear."

We note from the record that third party notice of the pendency of this dispute was given to the Brotherhood of Maintenance of Way Employes.

AWARD

Claim denied.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1970.