Award No. 6056
Docket No. 5781
2-SCL-SM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Gilden when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Sheet Metal Workers)

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier improperly assigned other than Sheet Metal Workers on October 18, 1966 through October 24, 1966 to install approximately 1050 feet of two (2) inch black iron pipe, approximately 1050 feet of one and one-half (1½) inch galvanized pipe and necessary fittings, used as fuel oil and water line in watering and fueling caboose cars.

2. That accordingly the Carrier be ordered to compensate Sheet Metal Workers T. W. Ogline, E. W. Bullock, Jr., H. B. DeLorie, J. W. Harris and C. J. Anderson in the amount of 112 hours at time and one-half rate to be divided equally.

EMPLOYES' STATEMENT OF FACTS: Sheet Metal Workers T. W. Ogline, E. W. Bullock, Jr., H. B. DeLorie, J. W. Harris and C. J. Anderson, hereafter referred to as the claimants, are regularly employed by the Seaboard Coast Line Railroad, (formerly Atlantic Coast Line Railroad) hereinafter referred to as the carrier, in the carrier's shops, Lakeland, Florida, (J. W. Harris, since claim was made, has returned to his home point, Tampa) and were available to be called on their rest days and after bulletin hours.

On October 18, 1966, maintenance of way employes were assigned to install 2-inch fuel oil line and 1½ inch water line in Track No. 13 that is used in servicing caboose cars. Track No. 13 is located within the yards, just adjacent to the Round House where diesel locomotives are repaired. In addition to seniority roster of sheet metal workers in the Round House at Lakeland, a separate roster is maintained for the sheet metal workers in the car department. While for several years the mechanic in the car yard has been furloughed due to insufficient work for regular assignment, the sheet metal workers from the round house have performed all the sheet metal worker's work in the car yard including all air, water, fuel oil lines and sheet metal work in that department.

Your board has further dealt with the principle here involved in denial Award 4130, and held in part as follows:

> "Relying on a literal interpretation of Rule 130, the Claimants argue that the work under consideration exclusively belonged to them. However, the rule is well established that 'literalness may strangle meaning.' See: Utah Junk Co. v. Porter, 328 U.S. 39, 44; 66 S. Ct. 889, 892 (1946); Lynch v. Overholser 369 U.S. 705, 710; 82 S. Ct. 1063, 1067 (1963). This is particularly true with respect to the application and interpretation of a labor agreement. The law is firmly settled that such an agreement, as a safeguard of industrial and social peace, should be given a broad and liberal interpretation consonant with its spirit and purpose — disregarding, as far as feasible, semantic technicalities or undue legalism which would tend to deprive the agreement of its vitality. See: Award 3954 of the Second Division and cases cited therein. Moreover, it is generally recognized in the law of labor relations that a labor agreement must be construed as a whole. Single words, sentences or sections cannot be isolated from the context in which they appear and be interpreted literally and independently, irrespective of the obvious or apparent intent and understanding of the parties as evidenced by the entire agreement.
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> In summary, we find that a consistent and long-continued practice well-known to and accepted by all interested parties has existed under which work of the nature here involved has been exempted from the scope of the labor agreement. This practice has become a part of the labor agreement although not explicitly expressed in it. See: United Steelworkers of America v. Warrior and Gulf Navigation Co., 363 U.S. 574, 582; 80 S. Ct. 1347, 1352 (1960). It follows that the practice can be changed or discontinued only through a modification of the agreement. Section 3, First (i) of the Railway Labor Act does not confer authority upon us to do this."

Carrier urges, in summary, that this claim is without merit and should be denied by your Honorable Board in its entirety, for the reasons that:

(1) An award in behalf of claimants would usurp and nullify rights of carrier's maintenance of way employes as contained in their agreement;

(2) To sustain the employes' position would ignore the spirit and intent of the sheet metal workers' agreement, as well as the custom and practice that has prevailed for many years in its application on the property;

(3) The claimants were regularly assigned during the period the work in dispute was performed, and have suffered no loss in any manner; and

(4) The time being claimed is excessive.

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 record shows that the Brotherhood of Maintenance of Way Employes, as an interested party hereto, has been notified of the pendency of this proceeding and has been afforded an opportunity to be heard herein. We find, therefore, that the third party notice requirements of Section 3, First (j) of the Railway Labor Act have been satisfied.

At issue here is the alleged impropriety in October, 1966 in utilizing M of W employes to install 1,013 feet of 2 inch fuel oil supply line, and 1½ inch water supply line in Carrier's Transportation Yard at Lakeland, Florida. It is urged on behalf of the Organization that, in assigning this work to M of W water service employes, the job prerogatives preserved to the Sheet Metal Workers by Rules 27 and 302 of the former ACL Shop Crafts Agreement were intruded upon and usurped. It appears that a total of 95 man hours was required for this installation.

The unequivocal pronouncement in Rule 302 (the Sheet Metal Workers Classification of Work Rule) that "Sheet Metal Workers' work shall consist of tinning, copper-smithing, and pipe-fitting in shops, yards, buildings * * *" refutes that notion that such performance is limited to the confines of the shop areas. Patently, the wording is broad enough to include the work covered therein when performed at the Transportation Yard. Simply stated, there is no support in the Sheet Metal Workers' scope rule for the distinction the Carrier is trying to draw between work allocations in the Transportation Yard and those in the Shop Areas.

Where, as here, contract language is clear and unambiguous, a conflicting custom or past practice does not serve to alter its plain meaning. Since Rule 302 is applicable to the work in question, it would follow that Sheet Metal Workers should have been assigned to the handling thereof.

Accordingly, each of the claimants herein is entitled to recover 19½ hours pay (1/5th of the total 96 hours involved) at the applicable straight time rate. Heretofore, in similar disputes between these parties this Board has upheld the suitability of the pro rata (in preference to the time and one-half rate) as the basis of recovery. See Awards 3868 and 4914, National Railroad Adjustment Board, Second Division.

AWARD

Claim sustained in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December, 1970.

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