

Award No. 6075

Docket No. 5881

2-N&W-SM-'70

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. 16, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Sheet Metal Workers)**

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated Article V of the August 21, 1954, Agreement, and accordingly claim should be allowed as presented.

2. That under the current Agreement, other than employes of the Sheet Metal Workers' Craft (B&B Carpenters) were improperly assigned to perform pipe work of dismantling and renewing drain (4 inch cast iron pipe) from roof of Erecting Shop, Roanoke Shop, Roanoke, Virginia, on March 13, 14, 1968.

3. That accordingly, the Carrier be ordered to additionally compensate the following employes (Sheet Metal Workers) in the amount of thirty-two (32) hours at the straight time rate, to be equally divided among them for this work.

CLAIMANTS: T. A. Garrison
G. A. Updike
C. R. Shifflett
E. H. Goad
D. H. Hendricks
E. M. Hairfield, Jr.

EMPLOYES' 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 are employed by the carrier in its Roanoke Shop to perform their work as specified in the current agreement. Maintenance renewals and repairs to pipe lines and sheet metal work in and on these facilities have generally been performed over the years by the sheet metal workers' repair gang, Roanoke Shops. On March 13, 14, 1968, the carrier, in a modernization of shop program, assigned maintenance of way employes to dismantle and renew a four (4) inch drain line from roof to floor of shop building erecting shop, in its Roanoke Shops.

3. Many prior awards of the Second Division have held:

(a) The shop craft scope rule separates the work of each shop craft and does not give any craft the exclusive rights to all such work. See Third Division Award 615 and Second Division Awards 3871, 4875 and 5019.

(b) Past practice ante-dating the agreement supports carrier's right to assign work. See Second Division Awards 3277, 3300 and 4130.

(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 (#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.

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 claim in this case was initiated under date of April 29, 1968 to Foreman S. C. McKinney. On June 26, 1968, Foreman McKinney rejected the claim giving his reasons for said declination. Claimants declined Foreman McKinney's decision within the applicable time limits. At this point the organization alleges that they appealed to the next highest officer and Carrier denied ever having received such an appeal. The only evidence submitted by Petitioner in this regard is an unsigned copy of a cover letter addressed to the next highest officer, but we are unable to make a determination from its contents whether it pertains to this or other claims. There are no identifying symbols which would in any way connect that letter with this case.

The next communication received from claimants was a letter dated October 9, 1968, 104 days later to General Foreman Minnix. On October 10, 1968, the General Chairman progressed the claim to Superintendent of Shops Gearheart, stating that Carrier had failed to comply with the time limits as set forth in the August 21, 1954 Agreement, to wit, having failed to issue a declination within 60 days, claim is automatically approved. Carrier thereupon took exception to the Organizations' position stating that the appeal to General Foreman Minnix had never been received and that since 104 days had transpired in the exchange of letters, the Organization had violated the 1954 Agreement rather than Carrier.

"It is a general principle of the law of agency that a letter properly addressed, stamped, and deposited in the United States mail is presumed to have been received by the Addressee. But, this is a rebuttable presumption. If the Addressee denies receipt of the letter then the Addressor has the burden of proving that the letter was in fact received. Petitioner herein has adduced no proof, in the record, to prove de facto receipt of the letter by the Carrier." (Award 11505 (Dorsey)).

The burden of proof in respect to the questioned letter has not been met by the Organization. Hence failing to adhere to the time limits set forth in the 1954 Agreement, the claim is effectively barred. We will dismiss the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1970.