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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6400
SECOND DIVISION Docket No. 6216
2-DM&IR-SM-'72

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 71, Railway Employes' Department, A. F. of L. - C. I. O. (Sheet Metal Workers)
(Duluth, Missabe & Iron Range Railway Company

Dispute: Claim of Employes:

1. That the Duluth, Missabe and Iron Range Railway Company at Proctor, Minnesota, violated the controlling agreements, when that Carrier assigned other than sheet metal workers to perform the piping of the Proctor oil waste disposal system in the Proctor Roundhouse.

2. That accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to compensate the following sheet metal workers and their helpers in the amount of sixteen (16) hours each at their respective rates; J. H. MacDonald, R. G. Masterson, C. L. Torba, P. D. Tassonde, L. F. Frederick; pipefitter welders, D. L. Simonsen, J. G. Irving, C. R. Schwindeman, pipefitters and H. Johnson, E. S. Girard, V. E. Stenswick, R. J. Donahue, W. M. Anderson, pipefitterhelpers.

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 Sheet Metal Workers claim payment for pipe work on the modernized oil waste disposal system at the Proctor, Minnesota roundhouse. A letter from the former General Chairman of the Maintenance of Way Employes, Bridge and Building Department explains the background, (attached to Submission of Third Party). In the steam locomotive days an elaborate system of drains, tunnels and sewer lines connecting the Railroad Yards and buildings including the round house, was used. The waste flowed into surrounding marshland and storm sewers. During the steam days a regular crew from the Bridge and Building Department cleaned the drains and tunnels in the round house and cinder pit areas. When waste product disposal changed from ashes to waste oils a new plan was devised. In 1960 a dam was constructed to accumulate into ponds the waste oil and other waste products which flowed from floor drains and open pit washing areas where steam and fuel oil are used to clean grease from locomotive parts. The accumulated waste oil and other by-products in the ponds were periodically burned by Bridge and Building forces. The burning created an air pollution problem and waste oil flowed into a nearby creek creating an additional hazard. Finally, a system was devised to carry the waste oil by pipes to settling tanks and to waste oil collection and storage tanks to a pyro-decomposition unit for disposal by burning at high temperatures, (Carriers Submission pp. 2, 4, 5 and a schematic diagram Exhib. B).

The Third Party claims this work because it is still a waste oil problem merely done in a different way. On page 1 of its Submission, it is referred to as a sewage line and that Bridge and Building employes were used and therefore should still be used to dispose of these "waste petroleum products." On page 2 of its submission the argument is made that agreements cover the character of work and not the method of performing it, even though the method may change. Many Third Division Awards are cited in support. On page 3 of its Submission, the conclusion is asserted that the Sheet Metal Workers recognizes the proper use of Bridge and Building employes to dispose of waste petroleum products; that in 1960 they installed the former disposal system and rightfully installed the new facility in dispute here.

The Carrier's Submission refers to the work in dispute as the installation of a two inch waste oil line to a waste oil storage tank. Reference is made to pipe installation work in the new system performed by Bridge and Building employes that was not disputed by the Sheet Metal Workers. That Organization denies this and says that it did claim the work but could not process the claim, because of a technicality, Exhibit A of Employes' Rebuttal.

The Carrier justified its action by contending that the classification of work rules are general rules which merely identify the type of work customarily performed by employes in their respective crafts. The Carrier claims that it correctly assigned the work of disposing of waste oil to the Organization which had done it in the past. Second Division Award No. 5718 is cited as requiring the petititioning Organization to prove its exclusive right to the work by custom, practice and tradition. Because of different viewpoints of the Organizations representing pipefitters and plumbers, a

memorandum of Agreement was entered into by the Carrier and the two Organizations, parties to this matter, dated February 9, 1962, Carrier's Exhib. D. The Carrier asserts its right to exercise its judgment because none of the Agreements referred to are specific. Relying on past practice, it gave the pipe work to Bridge and Building members because, "the disposal of waste oil has always--," been performed by them, "and also because it most closely resembled work which has historically been recognized as belonging to Bridge and Building plumbers, such as the installation of sanitary plumbing facilities."

We believe that the scope rules for classification of work should be followed unless clearly accepted practice is different. They usually are general in nature because they are intended to include work which is customarily performed in routine operations or recurring situations. An unusual or non-recurring situation does not lend itself to proof of past practice nor may we expect the unusual or unexpected to be specifically provided for in advance in the scope rules. Because both Organizations involved here do pipe work, there has been conflict which the parties attempted to resolve in the Agreement of 1962.

This is indicated by claimant's General Chairman in his letter, Exhibit C of Employes' Submission. He stated that the first oil waste disposal line was installed by outside contractors. Subsequently, sheet metal workers maintained and made modifications on the line and connected hoses and pipes to drain oil from diesels to the oil waste line. He also stated that Bridge and Building employes never installed oil waste pipe lines in the roundhouse. The letter points out that sheet metal workers have installed and maintained drain lines from adja-dip, lye, cooling, steam, testing and oil vats to and including connections to sewage lines so that a past practice exists for installing drain or disposal lines in the shops and buildings. First and foremost, however, the letter claims the work by reason of the scope rule and the three party agreement of 1962.

Reliance upon the 1962 Agreement is also stressed by the Carrier in its Submission, Exhibit C. The Statement is made that the 1962 Agreement did not contemplate that oil waste lines would be considered as oil lines; that there was no discussion of this because at that time waste was carried in the sewer system and dumped into ponds for disposal by Bridge and Building employes. This exhibit spelled out the Carrier's position as considering the present disputed line to be only a modern extension of the sewer drainage system.

Although the three party 1962 Agreement was intended to reconcile conflicting viewpoints, the Carrier believes that it provided a reason for it to use its own judgment in assigning the work if the Agreement is not specific on an issue. Both the Carrier and the Maintenance of Way Organization rely on past practice because the subject of oil waste lines was not discussed in arriving at the 1962 Agreement. These arguments emphasize that this case involves unusual, unexpected and non-recurring work. This is not work which

in our judgment was contemplated by prior Awards which require convincing proof of past practice.

Both Carrier and Third Party stress that this work should be considered only as modernizing and extending existing facilities. This is not so. There is no conflict over the fact that the new system required the installation of new pipe lines to new tanks and then to the point of disposal by a new method. This is no longer a system of drains, tunnels, ponds, marshland and creeks. The new system is neither a sanitary plumbing facility nor a sewer drainage system. It more closely resembles an oil line system such as we see at oil tank reservoirs, and at large manufacturing plants where a system of pipes carries oil or chemicals to and waste from the operation to reduce fire hazards and pollution.

The three party 1962 Agreement specifies fourteen classes of work with carefully divided duties to be performed either by the claimant or the Third Party. The heading "Gasoline Lines" grants to Bridge and Building the work for these lines to fuel Company cars, trucks and other equipment but gives to sheet metal workers the work of gasoline lines in or adjacent to oil house Buildings. The heading, "Oil Lines" directs that sheet metal workers will install, maintain and relocate all oil lines except in connection with heating. These two headings which deal with fuel include work on such pipe lines to be performed by the claimant. The Agreement does not refer to the oil waste lines. This carefully worked out Agreement was intended to minimize the need and it does not provide for independent judgment by one party only without conferring with the other parties to the Agreement.

The word "disposal" relied upon by the Carrier and Third Party is not the key to the past practice. The "disposal" referred to, as used in the record before us, consisted only of the burning of the petroleum waste in the pond or creek where the waste finally came to rest in the old system. We believe that under the circumstances of this case, the waste oil pipe lines work belonged to the sheet metal workers as claimed. On the record presented and the contentions of the parties, there does not appear to be a clearly defined custom, practice and tradition to support the position of either Organization to the exclusion of the other. The degree of proof normally required of the claimant as spelled out in prior Awards submitted by the Carrier is not applicable to this situation.

On the question of remedy, we have reviewed prior Awards which agree that a penalty to assure future compliance is appropriate for consideration although not spelled out in the Agreement. In this case, we rely upon prior Awards which have held that this is not, however, a hard and fast rule. We agree with Second Division Awards No. 4289 and 4312 which held that there should be no penalty where the violation was caused by misinterpretation or

misunderstanding or with regard to work which occurs infrequently. There was not an intentional disregard of a clear and specific rule or past practice.

A W A R D

Claim is 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 16th day of November, 1972.