Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD . Award No. 6749
SECOND DIVISION Docket No. 6533
2-L&N-SM-'74

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

Parties to Dispute: (Sheet Metal Workers' International Association
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

1. That the Louisville and Nashville Railroad Company violated the controlling Agreement, particularly Rule 87, and Memorandum of Understanding dated March 22, 1951, when January 26, 1971, other than Sheet Metal Workers were assigned installation of six (6) inch hose on auxiliary motor blower at Louisville, Kentucky.

2. That accordingly, the Louisville and Nashville Railroad Company be ordered to compensate Sheet Metal Worker T. E. Greenwell for eight (8) hours at the pro rata rate of pay for such violation.

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.

A machinist was assigned the work of installing a six inch hose on an auxiliary generator motor blower on a Diesel engine. The Organization contends that it is connecting an air hose (pipe) under the work classification Rule 87, or the applying of a rubber hose to an air line on a diesel locomotive according to a March 22, 1951 agreement to settle a jurisdictional question. The Carrier argues that the six inch part is a fabric rubber covered air duct which replaced on the newer diesels, a pipe used on the old diesels and, as such, is not within either agreement.

The Carrier makes the further contentions that this is a third party dispute and should be dismissed because the Organization did not comply with the procedure for third party disputes; that for twenty years since the 1951 agreement such work has been done by machinists, never by sheet metal workers and no claim has been filed by the Organization; that if the work does belong to sheet metal workers, no penalty or compensation should be required. The Organization has not denied or contradicted the Carrier's position that machinists have performed the work for twenty years since the 1951 agreement.

Rule 87 states in material part: "Sheet Metal Workers work shall consist of---and on engines of all kinds;---connecting and disconnecting of air---pipes---."

The March 22, 1951 agreement between the Sheet Metal Workers and Machinists, approved by the Carrier, states in paragraph III, so far as relevant: "Removing and applying rubber hose to---air lines on Diesel locomotives is Sheet Metal Workers Work."

The third party procedural question is disposed of by notice to the Machinists from the Secretary of this Division dated July 25, 1973. By letter dated August 7, 1973, the Machinists replied that they are not a party to this dispute and, "---based on the record---, it is not our intention to intervene." The Awards submitted by the Carrier refer to agreements which provide a procedure to be followed by the Organizations in jurisdictional disputes as a condition precedent to the filing of a claim, Second Division Awards 2747, 2780, 2931, 2936, 5789, 5793. They are not applicable because no such procedure is set forth in the agreement of March 22, 1951.

We are of the opinion that by whatever name or description, the work involved the attachment or installation of a hose to an air line on a diesel locomotive as described in the 1951 agreement. When an agreement is as clear as this one for this work, it cannot be changed by past practice, a possibility which exists in the case of an ambiguous statement.

However, we shall follow the line of Awards which find that where there is no monetary loss to claimant, where the work is minor in time, where no penalty provision exists in the contract and where there are mitigating circumstances, no compensation is granted; Second Division Awards 4083, 4194, 4312, 5048, 5152, 5890, and 6385. The Carrier stated without contradiction or denial that claimant was working during the time in question, that the work was performed in less than thirty minutes, that there is no evidence that either of the two agreements provide a penalty and that it was reasonable for the Carrier to believe that it could assign a machinist as it had done for twenty years without objection by the Sheet Metal Workers Organization. Additionally, there is no evidence in the record to support the "continuing" claim. It is an assertion without proof.