Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6783
SECOND DIVISION Docket No. 6580
2-SOU-SM-'74

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Southern Railway Company

Dispute: Claim of Employes:

1. That the Carrier on or about January 7, 1972, assigned Boilermaker Joe Maniscalco to perform pipefitters (SMW) work at the vapor degreaser.

2. That the Carrier be ordered to compensate Sheet Metal Worker Pipefitter J. W. Kennerly eight (8) hours at time and one-half rate of pay.

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 were given due notice of hearing thereon.

This is a claim filed by the Sheet Metal Workers International Association on behalf of one of its members. The submissions filed with this Board by the Sheet Metal Workers and by the Carrier disclose that the Carrier had assigned a Boilermaker to perform work, hereinafter described, which the Sheet Metal Workers claim belongs to pipefitters covered in their Agreement. It became apparent that the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, hereinafter referred to as the "Boilermakers" has a third party interest in the claim before this Board. Accordingly, the Executive Secretary of the National Railroad Adjustment Board, by order of this Division, did, on October 4, 1973, pursuant to Section 3 First (j) of the Railway Labor Act, as amended, notify the President of the Railway Employes' Department, representing the Boilermakers, of the pendency of this claim filed by the Sheet Metal Workers. The Boilermakers intervened in these proceedings, filed a submission, participated in the presentation at an oral hearing before the Referee and other Board Members, and was represented at the panel discussion.

The basic facts under which this claim arose are not in serious dispute. On the claim date, the Carrier's General Foreman assigned Boilermaker Joe Maniscalco to make necessary repairs to the Motor Shop vapor degreaser. "The actual work", says the Carrier, "consisted of burning off, repositioning, and welding in place a portion of a six-inch flue (a 4-pass heating tube) in the vapor degreaser." It took four (4) hours to complete the repairs. The Sheet Metal Workers contend that this work consisted of repairs to a pipe line which has always been work performed by pipefitters under Rule 123 of their Shop Craft Agreement.

It is apparent from an examination of the entire record that the Boilermakers' Local Chairman agreed with the Sheet Metal Workers' Local Chairman, on the property, that the work performed by the Boilermaker on the claim date belonged to pipefitters represented by the Sheet Metal Workers. Whether or not the Boilermaker Local Chairman's interpretation of work jurisdiction was correct and consistent with the contractual rules will be fully discussed later. He did, however, have the authority under Memorandum of Understanding on Page 123 of the Shop Craft Agreement to settle jurisdictional disputes.

Paragraphs (1) A and (2) B read as follows:

> "(1) A. If a craft is doing work, it will continue to do it and will under no circumstances, except as indicated below in item (3) A, be taken off unless and until the two Local Chairman involved or the two General Chairman of the crafts involved make an agreement and request that the work be changed.
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> (2) B. It is the mandatory duty of the Local Chairman as far as humanly possible to settle all jurisdictional disputes between themselves and, when so settled, handle the matter jointly with the Company officials that the work may be assigned as agreed upon. Failing to reach a disposition, the respective employee representatives must promptly refer their respective contentions to their General Chairman for disposition."

It is patently clear that the Sheet Metal Workers did exhaust their remedy under Memorandum of Understanding to resolve the jurisdictional work dispute that arose by the assignment of a Boilermaker to perform the previously described repair work on the claim date. There was no obligation to submit the dispute to the respective General Chairmen. Since it was resolved by the Local Chairmen, the General Chairman of either Organization had no power or Authority to review or rescind the agreement. In this respect, Memorandum of Understanding is unique. It may be more feasible to have jurisdictional disputes settled by General Chairmen and by Dispute Committees, but that is not provided for in Memorandum of Understanding. And this Board has no authority to substitute its judgment for that of the parties as expressed in their rules.

But an agreement between two Local Chairmen is not necessarily binding upon the affected Carrier, who has separate agreements with the two labor organizations represented by the Local Chairman. Memorandum of Understanding (2) B says that when a jurisdictional dispute is settled by agreement of the Local Chairmen the "work may be assigned as agreed upon." (Emphasis added). May be assigned by whom? By the Carrier, who alone has the right to assign employes to their tasks. The agreement of the Local Chairmen is not ipso facto also binding upon the Carrier.

And that is the only reasonable interpretation of Memorandum of Understanding (2) B. "May" denotes "possibility", "a granting of permission." It is a contingency which can or cannot happen at the will of the party involved. If it had been the intent of the parties to compel the Carrier to accept the agreement of the Local Chairmen the word "shall" would have been used instead of "may". The former is a command, a compulsion with force. This is the only common and ordinary meaning that can be given to the language in Memorandum of Understanding (2) B.

It is inconceivable that the parties intended to condone ignorance, inexperience or even fraud and connivance as a criteria in the settlement of local jurisdictional disputes. And yet, under the theory of the Sheet Metal Workers, agreements by Local Chairmen, however reached, are binding upon the Carrier. We are not suggesting that fraud or connivance existed in the agreement reached by the Local Chairmen in this case. But it is clear that the Boilermaker Local Chairman misinterpreted his Rule 76 and disregarded the practice on the property.

A careful reading of the record shows that Boilermakers had in the past performed the kind of work performed by the Boilermaker on the claim date. A statement in the record by a retired Boilermaker that he had "made repairs to 6" burner tube used to heat liquid pechlorethyline in boiler sumps of Vapor degreaser" is nowhere refuted. Neither is there any probative evidence whatever that pipefitters ever did this type of work.

The Sheet Metal Workers argue that notwithstanding any possible past practice the work belongs to pipefitters under their Classification of Work Rule 123, the pertinent parts of which read as follows:

> "Sheet-metal workers' work shall consist of tinning, coppersmithing and pipefitting in ... maintaining parts of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter ... including brazing, soldering, tinning, leading and babbitting ... and bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil, and steampipes ..."

It is true that a past practice may not replace or contravene explicit contract rights. Was then the work performed on the claim date exclusively pipefitter work as defined in Classification Work Rule 123? We think not.

The Boilermakers' Classification Work Rule 76 reads, in part as follows:

> "Boilermakers' work shall consist of laying out, cutting apart, building and repairing boilers, tanks, drums; inspecting, patching, riveting, chipping, calking, flanging, and flue work, ..."

Work on a six inch flue was performed by the Boilermaker on the claim date. The Sheet Metal Workers argue that the flue was a pipe and therefore should have been worked on by a pipefitter under their Work Classification Rule. The American Heritage Dictionary of the English Language, (1973) defines a flue as "a pipe, tube or channel through which hot air, gas, steam or smoke may pass, as in a boiler or chimney." So a flue may be a pipe with a special function. And the one worked on by the Boilermakers on the claim date was such a special pipe. But it was also a flue and as such was work which belongs to Boilermakers under their Classification Work Rule 76. They alone have the exclusive right to flue repair work such as was performed on the claim date.

If an ambiguity exists between what constitutes pipe work and what constitutes flue work certainly the practice that has existed on the property becomes relevant in allocating this particular kind of work. By long established and accepted practice the work performed on the claim date belongs to Boilermakers. This practice supplements and supports the Boilermakers' right to perform that work under their Classification of Work Rule 76.

For all of the reasons herein stated, the Board concludes that the Carrier did not violate the Sheet Metal Workers' Agreement and that the claim has no merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November, 1974.