

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International
Association
(
(The Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That the Texas and Pacific Railway Company violated the controlling agreement, particularly Rules 22 and 65, July 19, 1973, when they improperly assigned Electrician Gene Zuber the removing and replacing two 16 gauge metal panels from air conditioner evaporator coils on Business Car 9, Lancaster Diesel Shops, Fort Worth, Texas.
2. That accordingly, the Texas and Pacific Railway Company be ordered to compensate Sheet Metal Worker E. W. Sparks at Lancaster Diesel Shops, Fort Worth, Texas for four (4) 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 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 were given due notice of hearing thereon.

Claimant is employed as a Sheet Metal Worker at Carrier's Lancaster Diesel Shops located at Fort Worth, Texas. It is his contention that on July 19, 1973 the Carrier improperly assigned Electrician Gene Zuber work accruing to the Sheet Metal Workers' craft in violation of Rules 22 and 65 of the Schedule Agreement. The work consisted of removing and replacing 2 sheet metal panels on Business Car No. 9 at North End Lancaster Diesel Shops.

Carrier concedes that the work in dispute belongs to the Sheet Metal Workers' craft and that Electrician Zuber did, in fact, perform this work on the date claimed. However, Carrier asserts that no Supervisor instructed

the Electrician and his helper to remove and replace the panel and, in any event, claimant cannot complain since he actually observed the Electrician perform his work without protesting thereto.

The National Railroad Adjustment Board has enunciated certain guidelines from which to determine whether work contractually accruing to one craft has been misassigned to another craft. For example, in the instant claim, if Carrier had assigned the work to the Electrician, or if a Supervisor present at the work site had acquiesced in the Electrician performing claimant's contractually reserved work, then a contractual violation exists. Conversely, if claimant stood on the scene observing the Electrician performing work that he now claims belonged to him without making any protest thereto then his acquiescence precludes such protest now.

It is indeed unfortunate that the facts of record herein are so beclouded that we are unable to apply them to the foregoing criteria. For example, the Organization asserts that the Carrier instructed the Electrician to remove and replace the panel while the Carrier denies this, alleging that it assigned this work to claimant. Claimant, however, refutes this maintaining that he was not told what work to perform. And while the Organization insists that a Supervisor was present at the scene the Carrier disclaims that any Supervisor was present on Business Car No. 9. Finally, although Carrier argues that claimant watched the work being performed by the Electrician without protest, the Organization insists that most of the work had been completed before he became aware of it. Even claimant's statement to General Chairman Moorhead (Organization's exhibit "O") fails to clarify this discrepancy. Said statement being ambiguous we are unable to discern therefrom whether claimant observed all the work being performed or merely the completion thereof. Based on this state of the record, this Board is reluctantly compelled to dismiss the instant claim, since we are unable to determine the salient facts upon which to apply the criteria applicable to claims of this nature.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of June, 1975.