Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6924
SECOND DIVISION Docket No. 6691-T
2-MP-SM-'75

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rule 97, on October 11, 1972 when they improperly assigned Electricians the duty of disconnecting 1/4" and 3/8" copper pipes and removing cone from tope portion of vaporizer fluid cleaning machine, Pike Avenue Electric Shop, North Little Rock, Arkansas.

2. That accordingly the Missouri Pacific Railroad Company be ordered to compensate Sheet Metal Worker C. E. Cothran 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 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 by a sheet metal worker that arose when an electrician assigned to the Electrical Shop at North Little Rock disconnected refrigerating coils from a degreasing machine and removed the coils. The Sheet Metal Workers contend that this was work belonging to that Organization.

There is no question that the electrician melted the solder joints to remove the coils and resoldered the joints to reconnect the coils; no repair work was performed on the coils themselves.

Pursuant to third party notice, the Electrical Workers' Organization filed a submission contending that the work involved was properly assigned to its employes.

Carrier contends that there has been a practice of long standing to divide the work on cooling devices between sheet metal workers and electricians. Evidence of such practice is a letter addressed to the local chairmen of the two crafts dated March 23, 1950 that reads as follows:

"North Little Rock - March 23, 1950
File 2801

Mr. W. J. Lyons
Mr. S. B. Shock

Confirming verbal instructions in meeting in my office with Electrician Craft (Messrs. Lyons, Smith & Driskill) and Sheet Metal Worker Craft (Messrs. Shock, Roebling and Hammonds) present:

The servicing, maintaining and repairing of electric drinking fountains at North Little Rock Shops will be handled in accordance with past practice, i.e., Electrician Craft will maintain and repair all electrical equipment, compressors, will also connect and disconnect refrigeration lines and water supply lines inside cabinet in performing this work and to remove and replace coils. (Emphasis added)

Sheet Metal Workers Craft will maintain and repair all sheet metal work, will repair coils when necessary to remove and will also gas the boxes when necessary.

/s/ John Whalen"

Under the circumstances, the Board finds that the claim is without merit and must be denied.

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 /ss
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of September, 1975.

RECEIVED
OCT 20 1975
G. M. YOUHN

LABOR MEMBERS'
DISSENT TO AWARD NO. 6924, DOCKET NO. 6691

U.S. Supreme Court Justice Hugo Black, in a landmark railroad case 1/, decided in 1950, more clearly than anyone, the reasons for the existence of the National Railroad Adjustment Board.

> "The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon. Long and varied experiences have added to the Board's initial qualifications. Precedents established by it, while not necessarily binding, provide opportunities for a desirable degree of uniformity in the interpretation of agreements throughout the Nation's railway systems."

In this Award neither of the two prominent guidelines or purposes have been met. The Organization's problems in this case were simply ignored. As a result of this award, the employes of the Sheet Metal Workers' Craft will be deprived of work which rightfully belongs to them by contract Rule 97, reading in part:

> "SHEET METAL WORKERS' CLASSIFICATION OF WORK: RULE 97. Sheet metal workers,----work shall consist of tinning, coppersmithing, and pipefitting in shops, on passenger coaches, cabooses and commisary cars;----, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes----and all other work generally recognized as sheet metal workers' work." (EMPHASIS SUPPLIED).

The question to be decided in this award was the relegation of the disconnecting and connecting of 1/4" and 3/8" copper pipes and removing cone from top portion of vaporizer fluid cleaning machine from the Sheet Metal Workers to the Electricians, and the majority based their decision on a letter dated March 23, 1950, signed by then Superintendent John Whalen reading in part:

> "The servicing, maintaining and repairing of electric drinking fountains at North Little Rock Shops will be handled in accordance with

---

1/ Slocum v. Delaware, Lackawanna & Western Railroad, 339 U.S. 239, 94 L. ed 795 (1950).

"past practice, i.e., Electrician Craft will maintain and repair all electrical equipment, compressors, will also connect and disconnect refrigeration lines and water supply lines inside cabinet in performing this work and to remove and replace coils." (EMPHASIS SUPPLIED).

Since the majority's decision in this award was based on Mr. Whalen's letter which dealt only with water coolers - not cleaning machine, and since the majority's decision was based on a question not in controversy, it must be concluded the award is erroneous.

The majority ruled correctly and in strict accordance with the provisions of Rule 87 in Awards 6774, 6775, 6776 and 6777, all of which dealt with a question similar to the one here, and in Award 6774 held:

"----
The application of the Classification of Work Rule 87 of the controlling agreement was duly dealt with in Award 3770 involving a dispute between the same Parties as are before us in this case. Although in the situation then raised, Carrier had employed an outside contractor to install air-conditioning equipment in one of its buildings, this Board sustained a claim which charge that '...other than Sheet Metal Workers were improperly used to perform the work of installing and assembling all piping and pipe fittings in connection with the installation of all air conditioning units and their appurtenances...' There in is clearly delineated the extent to which the Sheet Metal Workers' Classification of Work Rule applied to newly installed air-conditioning equipment. The fact that in the dispute before us employes of the Carrier in another craft were employed to do the work which an outside contractor was used to do in 1957 and 1958 does not change the tenor of the precepts of Award 3770. Nothing in the record before us warrants finding that determination defective and it is therefore reaffirmed. The practices alluded to with reference to maintaining, servicing, and repair of air-conditioning units is not applicable to the installation of new heating and air conditioning equipment such as that which took place in December, 1970 in Carrier's Stores Building in Louisville, Kentucky. Rule 87, as Award 3770 clearly held, requires the assignment of all piping work from the cooping radiator to the compressor be made to Sheet Metal Workers."

and in Award 6777 it was held:

> "Although the facts concerning the work involved in this dispute varies somewhat from those set forth in Award 6774, Carrier, in its submission states therein replacing 'compressors with newer designed units . . . rerouting of the copper freon lines' was required. This entailed piping work of a nature which brings it within the purview of the application of Classification of Work Rule 87 of the controlling agreement. This was dealt with at lenght in Award 6774 and the Findings there are appliable hereto."

The Carrier, by action in this dispute, have changed the rules and working conditions of the employes involved. The majority, by the award, permits them to do this. The Railway Labor Act does not grant either the Carrier or the Board the authority to do this. The Act provides that the rules or working conditions will not be changed until a notice is served to change said rules or working conditions as per Section 6 of the Act reading:

> "SECTION 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice or intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

There is no exception in the applicable rules of the controlling agreement to justify the majority's conclusion that the instant work did not belong to Sheet Metal Workers to the exclusion of all others, and since the agreement contains no exceptions the findings and award of the majority is palpably erroneous.

M. J. Cullen

M. J. Cullen