

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

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

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly the Memorandum of Agreement dated April 7, 1950, on, May 9, 1973 when they improperly assigned Maintenance of Way Employees (Water Service Men) the repairing of oxygen valves and piping which included the disconnecting and connecting of pipes and repairing of oxygen valve on oxygen station in east end of Annual House, Pike Avenue Shops, North Little Rock, Arkansas.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Sheet Metal Workers J. E. Garrison and S. V. Pruss at North Little Rock, Arkansas for four (4) hours each 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.

When the leak was found at the oxygen valve at the oxygen station located in the east end of the **Annual House** in North Little Rock, there was a need for a properly skilled employee to place a **wrench** on the packing nut for the shutoff valve and by pulling it approximately one-quarter turn, stop the leak. Thereafter a soapy solution was used to verify that the leak had been stopped. The work was assigned to water service repairmen represented by the Brotherhood of Maintenance of Way Employees and the work was accomplished in less than five minutes. The Sheet Metal Workers International Association claims this work and seeks compensation for two of its members for four (4) hours.

The applicable agreement, dated June 1, 1960, provides under Rule 97 that Sheet Metal Workers have rights to work that includes pipe fitting in shops and the connecting and disconnecting of air, water, gas, oil and steam pipes. This agreement was reached against a background of interpretations and understandings. The earliest in the record is Circular 76 dated June 1, 1935 and reissued January 2, 1948. This circular purported to be an instruction for the information and guidance of all employees concerned. It provided "that at power plants, shops and enginehouses where Mechanical Department employees are available, they shall do all ordinary maintenance work on these facilities above ground..." In an interpretation of the understanding dated May 17, 1950 executed by the two unions, the Sheet Metal Workers and the Brotherhood of Maintenance of Way Employees, applicable to North Little Rock, it was agreed that Maintenance of Way Employees would have rights to new installations, relocations and dismantling of abandoned lines while Sheet Metal Workers would have rights to maintenance work including repairing, testing, inspecting all lines and equipment both inside and outside buildings, including changing and repairing all valves.

Thereafter on November 1, 1955 tripartite agreement executed by the above two unions and the Carrier was reached and designated a memorandum of understanding. Its purpose was to eliminate disputes and allocate work between the employees of these unions. Under the first paragraph thereof, it provides:

"From date of this Memorandum, pipe work is not to be allocated according to so-called past practice."

Thereafter, its various provisions allocate the work between the unions and include the following relevant provisions:

"(A)2. All maintenance, replacements and relocations inside of buildings - above ground or floor lines -- Sheet Metal Workers.

...

(B)1(a) All pipe work in power plant buildings except lead caulked cast iron pipe and fittings, and all underground lines -- Sheet Metal Workers."

It would appear, therefore, that the Sheet Metal Workers had a right to claim the work involved here unless the Water Service Employees could assert a better claim. Pursuant to provisions of the Railway Labor Act the Brotherhood of Maintenance of Way Employees were invited to file a submission in this dispute, which they did. It consists primarily of signed communications from Water Service Employees located at the North Little Rock installation, indicating that they performed the work in dispute. That submission concludes:

"... the work performed at the Annual House on May 9, 1973 by Water Service forces is work of the character traditionally and historically performed by such forces and that any attempt by other crafts to appropriate such work for themselves must be rejected and defeated."

Insofar as the third party submission does not cite an interpretation, understanding or award as persuasive authority for this conclusion, it is difficult to evaluate their claim. The third party rebuttal submission makes reference to agreement rules but none is cited. If they rely upon past practice, the record is far from clear on this. There is even some indication that the Carrier and the third party are not in agreement on this subject. Nevertheless, we believe such claim to a past practice is called into question by the express terms of the tripartite agreement quoted above.

The Sheet Metal Workers rely upon Second Division Awards 6184 and 6517. We believe these awards afford authority for the conclusion we reach that the Sheet Metal Workers established their rights to this work.

The Carrier next contends the work involved an emergency. There may be some doubt that an emergency was proven. See Award 6837. It is clear, however, that under circumstances of an emergency the carrier has broader latitude in assigning employees. In support of this contention the Carrier cites a number of awards. They range from sudden unforeseen circumstances that require immediate action that cannot be delayed. See Awards 4490, 20527, 1374. There are also situations where there is a predictable happening that is likely to occur with a degree of regularity. See Awards 17487 and 4926. Danger may be involved in both types of emergency but the difference, for our purposes, lies in the special duty to plan and anticipate that is apparent in the second category.

We believe the circumstances here involved a predictable happening that one could anticipate would occur with some degree of regularity. This type of leak is not a first time occurrence in North Little Rock as the cited awards indicate and under these circumstances we cannot agree that the Carrier should have a free hand in suspension of the rules.

We conclude the Carrier violated the agreement in not assigning Sheet Metal Workers to the work in dispute and this should serve as a caution in such assignments for the future. However, the record indicates the amount of work is so minimal that it falls within the de minimus doctrine and no compensatory award is made. Further, on authority of the cited awards, a penalty is not authorized. See Awards 4926 and 3672.

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A W A R D

Claim sustained in part and denied in part, in accordance with the findings.

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 9th day of July, 1976.