

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

Parties to Dispute: { Sheet Metal Workers' International Association
{
{ Burlington Northern Inc.

Dispute: Claim of Employees:

1. The Carrier violated the provisions of the current agreement when they improperly assigned other than Sheet Metal Workers, the assembling of eight (8) sheet metal racks made of 12 gauge sheet metal on August 13, 14, 15, 16, and 17, 1973, at Dale Street Shops.
2. That accordingly the Carrier be required to compensate Sheet Metal Workers Peter H. Taube and R. E. Koscielak each in the amount of eight (8) hours pay at the prevailing rate for each day of the above stated violations.

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.

The Claimants, Sheet Metal Workers P. Taube and R. E. Koscielak, are employed at the Carrier's Dale Street Shops located in St. Paul, Minn., a location on the former Great Northern Railway Company. On the claim dates Material Department employes represented by the BRAC Organization assembled eight sheet metal racks of 12 gauge sheet metal in the Material Department at Dale Street for their own use.

The Organization contends that the work of assembling metal shelves belongs exclusively to SMWIA employes.

The Carrier contends that the work of assembling metal shelves is not exclusively reserved to SMWIA employes by either Agreement rule or practice. The Carrier further contends that the claim by the SMWIA in the instant case is an attempt to extend the SMWIA's work jurisdiction to work accruing to employees represented by the BRAC Organization contrary to Rule 98(c).

The BRAC, Boilermakers and Blacksmiths, and the BMWE organizations were given third party notices of the pendency of this dispute before the Board. The BRAC organization did not file a submission, the Boilermakers filed a submission and then withdrew it. The BMWE did not file a submission.

Rule 71 states:

"Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings and on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling and maintaining parts made 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, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil, sand and steampipes; the operation of babbit fires; oxyacetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work." (Emphasis added)

Rule 98(c) states:

"It is the intent of this Agreement to preserve pre-existing rights accruing to employees covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S Railroads prior to the date of merger; and shall not operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging Carriers which were in effect prior to the date of merger."

Rule 72, The Sheet Metal Workers' Classification of Work Rule on the former Great Northern Railway is the same as the present BN Classification of Work Rule, Rule 71, with the exception that BN Rule 71 includes the word sand. See Carrier's Exhibit No. 10 p. 2 where Carrier states:

"It is noted that GN-System Federation No. 101, Rule 72, is identical in every material particular, to CBQ-System Federation No. 95, Rule 62, which in turn, is the predecessor of the present BN-System Federation No. 7, Rule 71...."

It is the purpose of Rule 98(c) to preserve preexisting rights accruing to the employees covered by the Agreement as they existed in effect on the Great Northern prior to the date of merger. Thus, whichever craft was contractually entitled to certain work prior to merger would continue to be entitled to the work subsequent to the merger. By contractually entitled we mean that clear, unambiguous and unencumbered language grants the work in question to the craft; or through the contractual language "all other work generally recognized as" the crafts work, the craft demonstrates an exclusive system-wide past practice

for the work in question. The SMWIA employes structure their case on the contention that clear and unambiguous language grants them the right to the work in question. Rule 98(c) requires us to return to the former Agreement, GN-System Federation No. 101, Rule 72 to ascertain whether or not Rule 72 (which is identical to present BN Rule 71 in every material particular) granted the work in question to SMWIA employes with the requisite clear, definite and unambiguous language. We find that this rule did specifically grant the SMWIA employes the exclusive contractual right prior to merger. The assembling of the materials in question clearly fit within the rule. See also Award 5618 and 6544.

The Carrier submitted evidence that Clerks had assembled the metal shelves in the Material Department at Dale Street prior to merger and contends therefore that the Clerks are entitled to have their preexisting rights protected under 98(c); and the Carrier is entitled to assign work on this basis. The SMWIA employes countered that if they had knowledge of Clerks doing "their" work, they would have filed a claim(s). Awards of this division have repeatedly held that a practice cannot overcome the definite and unambiguous provisions of a rule. We concur in this line of Awards, and conclude that the Carrier's contentions about a contrary practice cannot be controlling in this case in view of the clear and unambiguous language of the rule that existed prior to merger and indeed the rule that exists after the merger.

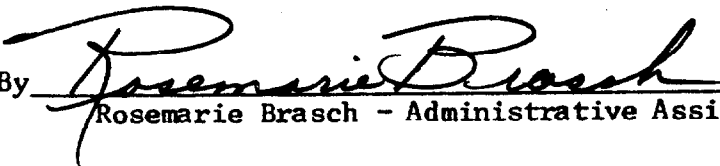
We shall sustain the claim.

A W A R D

Claim sustained.

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 14th day of July, 1976.