

The Second Division consisted of the regular members and in addition Referee Abraham Weiss 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 Rules 21, 26(a) and 97 at its Sedalia Shops, Sedalia, Missouri on April 10, 11, 14, 15 and April 16, 1975, when they improperly assigned Machinist Craft the duties of cleaning strainers, changing water pump, renewing pipes, unstopping pipes and fixing oil and water leaks on steam generators in Power House.
2. That accordingly the Missouri Pacific Railroad Company be ordered to compensate Sheet Metal Worker E. G. Zimmerschied eight (8) hours on each of the following days - April 10, 11, 14, 15, and 16, 1975 at the punitive rate of pay for such 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 waived right of appearance at hearing thereon.

Early in 1975, because of a decline in traffic, Carrier reduced its forces at its Sedalia, Mo. freight car repair facility, including the furlough of all Sheet Metal Workers there employed. One machinist was retained for necessary maintenance work within the Machinists' jurisdiction. The machinist was also assigned the cleaning of water pump strainers---work done by the sheet metal workers prior to their furlough---and, on a few limited occasions during the 10 months when all the sheet metal workers were furloughed, performed other sheet metal workers' work.

Petitioner filed the above-described claim (and similar ones in companion cases not here involved) on the grounds that the work described in the statement of claim belongs to the sheet metal workers' craft under their Classification of Work Rule (Rule 97); that a member of the Sheet Metal Workers should have been retained to do the work in question or to have been recalled to work for the assignment; that its members have been doing pipe work since the Power House was built and were always assigned this work by the Shop Superintendent before the force reduction; and that the Carrier failed to respond to the Organization's request for a time check on the amount of time spent on the disputed work.

Carrier's position is that because of the decline in the need for freight car repairs, there was insufficient work of the type described in the claim to justify employing a sheet metal worker.

The Machinists' Organization, after due notice, has filed a submission in this case, supporting Carrier's work assignment.

Carrier cites Rule 26(b), as amended by the National Agreement of September 25, 1964, (in part):

"At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as they are capable of doing so, perform the work of any craft not having a mechanic employed at that point. Any dispute as to whether or not there is sufficient work to justify employing a mechanic of each craft and any dispute over the designation of the craft to perform the available work, shall be handled as follows: at the request of the General Chairman of any craft the parties will undertake a joint check of the work done at the point..."

Carrier contends that this Rule permits it to assign the work in dispute to any of the crafts remaining on the property capable of performing the work, and that it is under no obligation nor requirement to revert to the situation prior to the furlough of the Sheet Metal Workers.

The Rule envisions the possibility that there may or may not be sufficient work to employ a mechanic of a particular craft. To determine whether the work at issue has diminished substantially or is performed only intermittently, the parties, under the Rule, are to conduct a joint check of the facilities.

As noted above, Rule 26(b) provides for a joint check of the facts. Although the record indicates that the Organization did request such a check, no check was in fact made, for reasons not indicated in the record.

Carrier states that it was necessary to retain a machinist during the furlough period for necessary maintenance work reserved to the machinists' craft, but acknowledged that the maintenance work performed by the machinist, in addition to that reserved to his craft, also included certain work performed by sheet metal workers prior to the furlough.

Carrier's Shop Superintendent, in declining the claim, (Carrier's Exhibit F-1) stated that Machinists have always lubricated steam generators and air compressors and related work, such as cleaning water strainers, did not require more than one hour a day.

Carrier also stated that once during the 10-month period when all sheet metal workers were furloughed, the work of changing a water pump was done by a machinist, a task which required only two hours' work. On another occasion, the machinist washed the steam generator coals on one generator, requiring two to four hours' work, but not requiring constant attendance.

Carrier adds that the only power house work performed by the machinist on a daily basis which the sheet metal workers had formerly performed was the washing of steam generator water pump strainers and such tasks did not require over one hour's work. Carrier indicates that Petitioner was so notified in June 1975 and that Petitioner has not denied the Carrier's time estimates.

Employee's Exhibit J. a letter from the Sheet Metal Workers' General Chairman to Carrier's Director of Labor Relations appears to acknowledge that the Machinist spent less than a half-day on the disputed work. The washing of generators, according to Petitioner's own statement, took place once a month and required about eight (8) hours work on each occasion, of which four (4) did not require the employee to be in attendance.

The record does not disclose any examples or instances cited by Petitioner of the machinist "renewing pipes, unstopping pipes and fixing oil and water leaks on steam generators," as alleged in the Statement of Claim.

The record also includes a claim that Carrier assigned Carmen to assemble railroad crossing signs in the Sign Shop which had been previously assigned to Sheet Metal Workers. This claim was not included in the original Statement of Claim, and, in accordance with well-established authority, lies outside our jurisdiction.

Carrier also relies on the principle of stare decisis, citing prior Awards on this railroad, under the same agreement but involving a different Organization, under circumstances similar to those present in the case before us. (Second Division Award No. 2607 (Shake) and 3298 (Ferguson)). In these prior cases, Machinists were furloughed, the number of Carmen was increased, and the remaining work assigned to Carmen. The Board, in both these cases found that the volume of machinists' work had declined

markedly, such as to warrant furloughing machinists, and, accordingly, denied the Machinists' claim on the ground that there was not sufficient work to occupy a machinist.

We agree with the conclusions in the above-cited cases in their application to the instant case.

The burden is on the Organization to demonstrate that Carrier's action was unwarranted. This the Organization has failed to do.

The Organization did not present evidence to show that there was sufficient work to keep a sheet metal worker employed. A joint check, though requested, was not made, as provided in Rule 26(b). We are troubled by the fact that the joint check was not made. Such a check, had it been performed, would have gone a long way to resolving the critical issue of whether there was "sufficient work to justify a mechanic of each craft"; specifically, the amount of time spent by the machinist on work claimed by the Sheet Metal Workers during the period Sheet Metal Workers were on furlough status. But a review of the record, based on evidence supplied either by the Sheet Metal Workers or by the Carrier (in the latter case not denied by the Organization), supports a finding that such work by the retained machinist was insufficient on a daily basis, or was too sporadic as to justify employing a full time sheet metal worker.

Nor has the Organization demonstrated that Rule 26(b), as amended by the National Agreement of September 25, 1964, precluded Carrier from using a machinist to perform the limited or infrequent work heretofore performed by a sheet metal worker, after the furlough of all sheet metal workers because of a decline in business.

The Board finds, therefore, that the claim fails because the Organization did not prove there was enough work to keep claimant on the job. The procedure specified in Rule 26(b), governing disputes over the assignment of work was not followed.

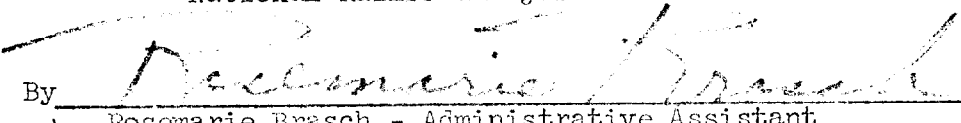
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 21st day of July, 1978.