

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: { System Federation No. 114, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Boilermakers)
 { Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That at the Roseville California Facility on May 31, 1977, the Southern Pacific Transportation Company violated the controlling Agreement when employees other than those from the Boilermaker Craft were assigned to drill the tap holes in the main fuel tank of Units 8905 and 9138.
2. That accordingly, Boilermaker John Coble be additionally compensated eight (8) hours at his pro rata rate of pay on account of said violation and an additional eight (8) hours at his pro rata rate of pay for each day subsequent to May 31, 1977 that said work is improperly assigned and violation is corrected.

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 waived right of appearance at hearing thereon.

This claim arises as a result of Sheet Metal Workers being assigned to drill and tap holes in the main fuel tanks of diesel locomotives 8905 and 9138 on May 31, 1977 in connection with the application of a Buckeye Automatic Fuel Shut-off device.

Petitioner alleges that prior to May 31, 1977, Boilermakers were assigned and did perform the work of drilling and tapping holes in the main fuel tank of named Units in connection with the modification work involved preparatory to the application of the shut-off device. Carrier's assignment of Sheet Metal Workers, Petitioner maintains, violates the Boilermakers' Classification of Work Rule 62, which reads in pertinent part:

"Boilermakers work shall consist of laying out, cutting apart, building or repairing boilers, tanks, ... all drilling, cutting and tapping, ... in connection with Boilermakers work."

Petitioner also argues that the company's action violated Memorandum "A", negotiated April 17, 1942, which provided, in connection with jurisdictional disputes, as follows:

"In recognition of the facts above recited, and in order to avoid confusion at the local points and provide an orderly determination of the items of work not specifically stated in the 'Classification of Work' and other Rules of the several crafts, it is agreed that existing practices will be continued, unless and until otherwise decided by conference and negotiation between the General Chairmen involved, and the General Superintendent of Motive Power, for purpose of uniformly (sic) applying such decision wherever necessary on the railroad."

In this connection, Petitioner's position is that working on fuel tanks has always been Boilermaker work, including changing the tank, repairing or retapping or replacing fittings on the tank, and that assigning the contested work to any other craft violates the provision of Memorandum A that "existing practices will be continued".

During the handling of the claim on the property, Petitioner referred to a prior meeting between the General Foreman and representatives of the Boilermaker and Sheet Metal Worker crafts which resulted in a decision "that the two crafts would work together on the X project 0113 Buckeye Automatic Fuel Shut-off in the service track area and that specifically the drilling and tapping of the fuel tank was to be Boilermaker work". Notwithstanding such decision, Petitioner's argument runs, "The entire project was given to the Pipefitters under the Incidental Work Rule. Previous to this, on May 31, 1977, a Boilermaker and a Pipefitter were assigned X project 0113 work in the service track area".

In connection with Petitioner's claim submitted to this Board, third party notice was given to other Organizations affected.

Carrier maintains that the work involving drilling and tapping of holes in fuel tanks is not reserved exclusively to any class or craft. In its Ex Parte Submission to this Board, Carrier asserted that the instant claim involves a jurisdictional dispute; that the parties in Memorandum A agreed to a stipulated procedure for resolving such disputes; and that whereas Petitioner's Local Chairman and General Chairman both alleged on the property that Memorandum A was involved, the dispute was not handled in accordance with the procedures set forth in that Memorandum. Carrier

contends that Memorandum A clearly and specifically refers to such matters being "... decided by conference and negotiation between the General Chairmen involved and the General Superintendent of Motive Power (current title - Chief Mechanical Officer - System)" and that no deviation from that procedure is expressed or implied. Hence, it states, the instant claim should be dismissed for lack of jurisdiction by this Board. In support, Carrier cites Second Division Awards 7218 and 7481 on this property, which dismissed the claims involved in those two cases because the "clear, mandatory provisions" of Memorandum A referring to negotiations between the General Chairmen involved and the General Superintendent of Motive Power had not been complied with by the parties.

Had Carrier raised this defense on the property, we would have followed the Board's prior decisions in Awards 7218 and 7481 and would, accordingly, dismiss the instant claim. But Carrier did not raise this issue until its submission to this Board and for this reason, such defense must be considered untimely. Accordingly, we are compelled to sustain the claim, especially in view of the fact that Petitioner, during the handling on the property cited specific instances, naming individual Boilermakers who did the work which is in dispute, on specifically identified engines, prior to May 31, 1977, and without any contravention by Carrier. In our view, this established an existing practice which, in accordance with Memorandum A "will be confirmed" while otherwise decided in accordance with the procedure established in Memorandum A. Awards 7281 and 7481, relied upon by Carrier, are premised on strict compliance with procedural provisions of Memorandum A. Such procedural provisions, needless to say, are applicable to Carrier as well as to the Organizations involved.


The record contains no reference to any assignment of the subject work other than on the date cited in the original grievance filed by the local chairman on September 22, 1977. For that reason, we will limit our award to claimant in the amount of 8 hours' compensation at his pro rata rate of pay.

A W A R D

Claim sustained to the extent set forth in Findings.

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 18th day of July, 1979.