

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

Parties to Dispute: (Sheet Metal Workers' International
(Association
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(St. Louis-San Francisco Railway Company

Dispute: Claim of Employes:

1. That the St. Louis-San Francisco Railway Company violated the controlling Agreement, particularly Rules 31(a) and 94 when on May 20, 1976, others than Sheet Metal Workers were assigned the disconnecting and connecting of hoses on Engines 910, 914, 128, and 842 connected and tested brakes and sanders on Engines 946, 840, 928, 910, 914, 842, 711, 633, and 726 and changed hoses on Engine 407, Diesel Shops, Memphis, Tennessee.
2. That accordingly, the St. Louis-San Francisco Railway Company be ordered to compensate Sheet Metal Worker Don Davidson for eight (8) 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 waived right of appearance at hearing thereon.

These claims arose at the Carrier's Diesel Shops in Memphis, Tennessee. The facility is one of the Carrier's major terminals.

For a series of successive midnight shifts in May, 1976, the Carrier blanked a regularly bulletined Sheet Metal Worker position. The Organization concedes the Carrier's right to blank regularly bulletined positions but asserts that that right is not accompanied by authority to have recognized Sheet Metal Workers' work performed by members of other crafts.

The Organization filed a separate claim for each of the 5 days. The claim in each instance is for 8 hours' pay on behalf of a Sheet Metal Worker on the grounds that Sheet Metal Workers' work was performed by an Electrician. (We are ignoring, for reasons of record fuzziness, the additional claim that a foreman in some instances performed Sheet Metal Workers' work.) The 5 days are May 20, May 21, May 22, May 23 and May 24. The May 20 claim is on behalf of Sheet Metal Worker Davidson and ended up as Adjustment Board Docket No. 7595-T. The May 21 claim is on behalf of Sheet Metal Worker Gretory and ended up as Adjustment Board Docket No. 7601-T. The May 22 claim is on behalf of Sheet Metal Worker White and ended up as Adjustment Board Docket No. 7602-T. The May 23 claim is on behalf of Sheet Metal Worker Davidson and ended up as Adjustment Board Docket No. 7600-T. And the May 24 claim is on behalf of Sheet Metal Worker White and ended up as Adjustment Board Docket No. 7599-T. Due to the similarity of these claims, these findings will apply to all five dockets.

The work which is involved in the claims occurs when a locomotive consist is made up or broken up. Presented are these duties: the disconnecting and connecting of rubber air hoses (the connections being of the gladhand type); the checking of brakes and sanders; the replacing of worn hoses; the checking of the level of engine cooling water; and the checking of the engine cooling system for leaks. Relative to each other, these duties are of varying frequency. The claims identify the Engines on which the claimed work was performed. Involved, on the average, were some 5-6 Engines per shift.

Rule 94, the Scope Rule carrying the title of "Classification of Work", reads in part as follows:

"Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, and buildings and on passenger train cars and engines of all kinds ... the bending, fitting, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes ... and all other work generally recognized as sheet metal workers' work."

Much has been held and written on the subject of exclusivity and its related issues. We have read many Decisions which address themselves to the matter in one fashion or another. We find no consistency in reasoning, guiding principles, or outcome. This is true, as well, of the Decisions which the parties have specifically cited and relied upon. The Decisions simply go "both ways". To rely on them for the disposition of the present case would be, not to go with established precedent, but to resort to selective culling-out.

We believe, moreover, that it is at once unnecessary and unwise to make a broad and far-reaching determination as to whether or not the claimed work falls under the umbrella of the exclusivity doctrine. By

proper view, we believe, the case does not raise a question of universal applicability at all of the Carrier's locations and throughout its trackage. By proper view, rather, the case is confined to a particular location with its particular personnel and its particular jurisdictional practices. We are so proceeding and so deciding the case.

We grant that this narrowing is not without interpretative overtones. We are in effect saying that the concluding language of Rule 94 - "and all other work generally recognized as sheet metal workers' work" - is properly applied on a per-location basis. We think it is the right approach. For the contrary approach would require the uncovering of the practices at all of the Carrier's operations and would mean that any exceptional practice - no matter how "hinterland" in character and no matter how explainable by unusual and compelling underlying circumstances - would be of governing effect. It would mean, in other words, that long-followed customs defining Sheet Metal Workers' turf at numerous Carrier locations are subject to destruction by a mere showing that a contrary custom exists at some other Carrier location. In turn, this would either permit the tail to wag the dog, in about as non-sensical a fashion as is imaginable, or would make it incumbent on the Organization - to the detriment of all concerned - to tolerate no exceptional arrangement, even where such arrangement might be wholly acceptable to the Organization's local members and representatives.

By the approach we are taking, the holding must be in the Organization's favor. The Carrier's chief defenses are: that the claims represent no more than retaliation for the fact that the position was blanked; that a rubber hose is not, and cannot be accepted as the equivalent of, a pipe; and that, though there is no denying that Sheet Metal Workers have occasionally done the work here in question, it is commonly done by all sorts of other employes - Enginemen, Switchmen, Carmen, Brakemen, Hostlers and even Hostler Helpers. As to the last of these contentions, the Carrier has not pegged it to the Memphis Diesel Shops - the contention is phrased so as apparently to apply to what is true of the property as a whole. Contrarily, the Organization has brought the strongest sort of evidence relating to the Memphis Diesel Shops. It has shown that this is among the Carrier's few locations (a major terminal) where Sheet Metal Workers are employed to begin with. And it has submitted a series of supporting statements from employes who work at the Memphis Diesel Shops and who are members of other crafts. We are not reading the statements as making it literally true that all the chores here presented have at all times and under all circumstances been performed by Sheet Metal Workers at the Memphis Diesel Shops. But the statements can hardly be discounted as being of self-serving character. They come from potentially competing employes. And they show that the work at the Memphis Diesel Shops has traditionally been treated as Sheet Metal Workers' work and that, but for the blanking, it would have been performed by a Sheet Metal Worker.

A W A R D

Claim sustained in accordance with the Findings.

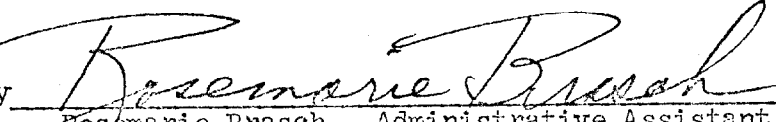
Form 1
Page 4

Award No. 8004
Docket No. 7595-T
2-SLSF-SM-'79

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 25th day of July, 1979.