Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8151
SECOND DIVISION Docket No. 8071-T
2-MP-SM-'79

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

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

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 26(a), 97 and Article V, Sections A, C. D, G, when on November 25, 1977 other than Sheet Metal Workers were assigned the disconnecting and connecting of pipes to regulating valve on air compressor at center air compressor room, Kansas City Diesel Shops, Kansas City, Missouri.

2. That accordingly the Missouri Pacific Railroad Company be ordered to compensate Sheet Metal Workers G. E. Edmondson and G. E. Parker two (2) hours forty (40) minutes each at the punitive 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.

On November 25, 1977, carrier assigned two machinists to repair a faulty regulator valve on the air compressor in the Diesel Shop at its Kansas City facility. This assignment required the disconnecting and connecting of pipes leading to the faulty valve. According to the record, the pipe work took a total of thirty minutes.

The organization, thinking that the job of disconnecting and connecting pipes belonged to sheet metal workers and not to machinists, filed a claim for call-in pay for two men at the punitive rate of four (4) hours pay. The claim for call-in pay was filed because the regular sheet metal worker assigned to the shift during which the challenged work was done was off sick. The two men on whose behalf the time claims were filed were next out on the overtime list.

The claim was processed on the property, denied at each step of the grievance procedure, and is now before this Board.

The carrier relies on Rule 52a of the June 1, 1960, consolidated agreement for its authority to assign the disconnecting and connecting work to the machinist assigned to repair the valve. This rule reads in pertinent part as follows:

> "Machinists may connect and disconnect any wiring, coupling or pipe connections necessary to make or repair machinery or equipment."

The organization in claiming that the pipe work is work that should have been assigned to sheet metal workers, relies on Rule 97 of the consolidated agreement. This rule reads in pertinent part as follows:

> "Sheet metal workers ... work shall consist of ... the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes."

It is undisputed that the disconnecting and connecting of pipes is a task that has been assigned, by agreement, to both sheet metal workers and to machinists. In situations in which two crafts are assigned, by contract, the same work, a dispute frequently arises over which craft should receive the work and under what conditions these assignments can be made.

From a reading of the contract language in the June 1, 1960 agreement, and from the history of the railroad industry, it must be concluded that the parties intended that the disconnecting and connecting of pipes is sheet metal workers' work, as a basic contract right. If the instant agreement were void of any mention of pipes being connected or disconnected by any other craft, there would be no question that all instances of pipe connecting or disconnecting would be done by sheet metal workers. The parties to the 1960 agreement, however, despite the clear language of Rule 97, decided and agreed that under certain conditions machinists could disconnect and connect pipes. They wrote that in their agreement as part of Rule 52a. The parties limited the right of the carrier to give this work to machinists to a single situation: when it was necessary for a machinist to disconnect and connect pipes in order to get at a piece of machinery or equipment he was assigned to make or repair.

A careful reading of the language of Rule 97 and 52a clearly supports this analysis. Rule 97 reads "sheet metal workers ... work shall consist of ... connecting and disconnecting ... pipes". Absent any special agreement, they must be assigned this work. Rule 52a reads "machinists may connect and disconnect ... pipes". Even under conditions present in this case, this language cannot be read by the machinists to mean that this work is by contract always theirs.

If the carrier chooses in every instance to assign the connecting and disconnecting of pipes to sheet metal workers, the machinists would not have a right under Rule 52a to claim the work. The language of Rule 52a gives discretion to the carrier to assign the pipe work as described in this case to either machinists or to sheet metal workers. That is clearly what was intended by the language and this Board sees no evidence in the agreement to conclude otherwise.

The narrow issue for this Board to decide in this case is: in light of the language of Rule 97 and Rule 52a, did carrier violate the agreement by assigning the pipe work to the two machinists assigned to repair the valve? At the outset of this decision, it must be stated that the Incidental Work Rule, Article V of the May 12, 1972, agreement, does not apply to this dispute. The rule as specified in Article V applies only to work performed on rolling stock. Clearly that is not the case here. Section i of Article V, however, does have a bearing on this case and must be considered. Section i clearly indicates that the Incidental Work Rule supercedes the so-called Kite Tail Rules in schedule agreements as they apply to running repair on rolling stock. This section cannot be read, however, to have superceded Kite Tail Agreements as they apply to other than rolling stock.

In this case, we are involved with a Kite Tail Agreement as it applies to dead work. The organization does not argue that rule 52a does not have any meaning. It does argue, however, that it cannot be applied in the manner the carrier has in this case.

The organization presented a letter dated February 13, 1920, that is a part of the official interpretation of the rules of the National Agreement. It claims that it is a binding document that gives meaning and intent to Rule 52a. It also states in the record that carrier knows full well that it is applying Rule 52a incorrectly. In every similar situation in the past, the union has filed a claim and the carrier has paid it. The 1920 letter states:

> "Concerning the question raised in your submission as to whether or not machinist may connect and disconnect pipes in order to remove, replace or repair parts which must be worked on in connection with his classification of work, will advise that machinists will not perform this work at points where sheet metal workers are employed.
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> Signed Asst. Director"

This Board has considered the impact of this letter in a previous case involving a similar set of facts. (Award No. 5495). In that case, the Board ruled that no evidence was presented that demonstrates that carrier had agreed by words or action to the interpretation or the status given the letter by the organization.

We see no justification from the record before us in this case to modify that position. A careful reading of the 1920 letter leaves a number of questions unanswered. The letter makes no mention of the question asked of the Assistant Director. It makes no mention of the contract language involved or of the situation that existed at the time. It would be presumptuous for this Board to assume, without further evidence, that the conditions in this case parallel the conditions that existed in the 1920 case. It would also be presumptuous of this Board to give the 1920 letter precedential weight without a further showing than exists in the record before us that both carriers and unions adopted it as authority.

The organization stated in the record, and the carrier did not refute it, that in similar situations on this property the union has always filed claims and the carrier has paid them. The record, however, is lacking in examples of this. In order for the parties to a collective bargaining agreement to modify the clear language of that agreement by a past practice, it must be clearly demonstrated that both parties, by mutual agreement, intended that the language would not mean what it appears to say. This must be done by showing that by unequivocal actions over a long period of time, both parties intended that the contract language not be enforced. This showing is not contained in the record before this board.

Absent a mutual intent to ignore or modify the language of the contract, one party cannot raise the issue of past practice in an effort to modify clear contract language. It is a universally accepted principle of labor relations and of arbitral law that either side has the right to implement the clear language of the agreement at any time if it cannot be demonstrated that both parties have over a long period of time, intended that the language not be implemented. Neither party to a collective bargaining agreement is forever bound to continue the lax administration or enforcement of a contract clause that clearly states its rights.

Carrier, in this instance, chose not to call in a sheet metal worker to disconnect and connect the pipes leading to the regulator valve that had to be repaired. It assigned the pipe work to two machinists. This was a special situation. The regular sheet metal man was off sick. To call in the sheet metal workers who filed the claim would have been costly to the carrier. It decided to exercise its option under Rule 52a to use machinists for the sake of expedience. It had a right to do so. This does not mean, nor did carrier argue in the record, that it intends to do this in all similar cases in the future.

It has been previously been stated in this award that sheet metal workers have the task of disconnecting and connecting pipes as a basic right. It is expected that under normal conditions when a sheet metal worker is readily available, he should be assigned the task. This would be in line with the intent of the parties' agreement and within the interpretation of Rule 97. When special situations arise, as they did in the case now being considered by this Board, carrier, by contract, has the right to use its discretion in the assignment of connecting and disconnecting

work when it is essential for a machinist to get at the equipment he is required to repair.

After a thorough review of the record before it and a consideration of the arguments presented by both parties, this Board denies the claim.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of October, 1979.