

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
 { Burlington Northern Inc.

Dispute: Claim of Employes:

1. The carrier violated the provisions of the current agreement when they improperly assigned other than Sheet Metal Workers to bend, fit, cut and connect 3/8 inch O. D. steel tubing, to fit and connect 1/4 inch, 3/8 inch and 3/4 inch iron pipes and to fit and connect 3/8 inch hoses, all of which is part of the oil piping system on a bearing demount press. The herein described work was performed on or about the days of August 23, 24, 25, 26, 29 and 30, 1977, at the new Wheel Shop at the Burlington Northern Havelock shops.
2. That accordingly the carrier compensate Sheet Metal Workers G. E. Wolfe, N. A. Paulsen and A. L. Fisher each in an equal apportion of hours and minutes pay at the rate of time and one half the prevailing rate for the above stated dates, the total of the equal apportionments to be commensurate with the sum total of time involved in performing this work as per the carriers records, which you advised were made note of in connection with this particular case during our conference of September 2, 1977.

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.

Petitioner contends that Carrier violated the Agreement between the parties when four Machinists cut O. D. steel tubes, made bends with the use of a tubing bender, fit and connected the tubes with compression type fittings, and fit and connected hoses as part of an oil piping system on a homemade bearing demount press. The demount press is used to remove the bearing assemblies from the journals of railroad car wheel axles at a new Wheel Shop at Carrier's Havelock Shops. Hydraulic oil is the medium used in the oil piping system. Petitioner seeks compensation at the punitive rate for named claimants who are Sheet Metal Workers allegedly denied the disputed work.

Petitioner relies primarily on Rule 71 (Sheet Metal Workers' Classification of Work Rule) as well as on Rule 27 (Assignment of Work) and Rule 70 (Sheet Metal Workers' Special Rules -- Qualifications).

Petitioner emphasizes the following language of Rule 71:

"Sheet metal workers' work shall consist of ... pipefitting in shops, ... and on ... engines of all kinds; ... the bending, fitting, cutting, threading, brazing, connecting and disconnecting of ... oil, sand and steampipes; ... and all other work generally recognized as sheet metal workers' work."

Petitioner asserts that the machinists performing the work in dispute employed tools used daily by Sheet Metal Workers -- pipe cutters, threaders, benders, and wrenches. Petitioner submitted affidavits from Sheet Metal Workers and from a Boilermaker and Blacksmith employed at the Havelock Shops that Sheet Metal Workers had performed similar or identical work prior to the dates in question. A Sheet Metal Worker attested that "this type work" was performed by his craft at the Lincoln Diesel Shop.

Two of the affidavits, however, one by a Sheet Metal Worker and the other by a Boilermaker and Blacksmith, stated that some five months prior to the dates in question they had observed a Machinist cut, bend, fit and connect oil tubing, pipe, and fittings on a 750 ton Watson-Stillman Press in the Fabricating Shop of Carrier's Havelock Shops.

Petitioner also alleges violation of Rule 98(c), designed to "preserve pre-existing rights accruing to employees covered by the Agreements as they existed under similar rules in effect" on the individual roads prior to their merger into the present system.

Petitioner refers to an exchange of letters between the Organization's Local Chairman and Carrier's Superintendent, Havelock Shops, following a conference held about one year prior to the date of the incidents here involved, "regarding the assignment of work involving hydraulic conveyance systems". The Local Chairman recorded his understanding of the conference between the two as follows:

"As of this date, it is fully recognized and agreed to that Sheet Metal Workers shall retain all rights and privileges to the performance of work of cutting, threading, bending, flaring, swaging, fitting by all means, connecting, disconnecting, assembling, installing, dismantling, and maintaining any and all pipe, tubing, hose, or any other type of conduit or means of conveyance that may be in any way associated with a hydraulic system, mechanism, appliance, or appurtenance of any type, which may use oil, glycerol, water, or any other type of fluid or liquid to operate, move, or in any way effect or be associated in any way with sand system, mechanism, appliance, or appurtenance."

Carrier's Superintendent replied in pertinent part as follows:

"You are basically correct in your understanding of who will perform the subject work ..." but added "further clarification will be forthcoming at meeting to be held with Mr. D. S. Smith on September 23, 1976."

Carrier responded that these letters referred to the piping outside the machine and that the Organization was in error in assuming that the understanding referred to "pipes connected to or on the machines". Carrier alleges that at the September 23, 1976 meeting, the Local Chairman was advised that Sheet Metal Workers would be used to renew and repair hydraulic lines in the shop, when these lines were mounted on walls, ceilings or floors, but when the lines reached, or were integral part of, machines, machinists would be used.

In rejecting the claim, Carrier first raises a procedural question, alleging that this Board lacks jurisdiction inasmuch as Petitioner failed to utilize available procedures on the property to settle the issue of craft jurisdiction with the Machinists' Organization, pursuant to Rule 93, Jurisdiction, which states in part:

"Any controversies as to craft jurisdiction arising between two or more of the organizations parties to this agreement shall first be settled by the contesting organizations, and existing practices shall be continued without penalty until and when the Carrier has been properly notified and has had reasonable opportunity to reach an understanding with the organizations involved ..."

As to the merits, Carrier takes the position that the Machinists were engaged in repairing the bearing demount press, specifically, "disassembling repairing and reassembling integral parts of the hydraulics control system"; that the work "was performed on the machine itself" and that the Agreement does not prevent machinists from "connecting or disconnecting a pipe on the machine in the course of doing so"; that the work has always been performed by Machinists; that although Rules 70 and 71 refer to pipes, "these rules do not grant the exclusive right to the work on pipes which are part of a machine"; that Sheet Metal Workers do not have the exclusive right to the work in question on a system-wide basis on the predecessor carrier and since machinists have performed work of the kind involved here in the past, Rule 98(c), which preserved pre-existing rights to work, was not violated.

In Carrier's view, the central issue is whether Sheet Metal Workers have the exclusive right, under the Agreement, to perform piping work on a hydraulic system that is an integral part of a shop machine.

Petitioner denies that the work performed by the Machinists in the instant case was repair work as claimed by Carrier, but rather involved creating "a piping system which connects a machine and two related appliances". As to the Superintendent's statement that the work at issue was performed on the machine itself, Petitioner responded that "the preponderant part of the work performed

in this instance was located in the pit adjacent to the appliances which clean the axle journals, on the floor next to this pit, and in the conduits which are located under the concrete floor and connect the various appliances".

The Machinists' Organization, as interested third party, was notified of the claim and responded by calling attention to Rule 93, Jurisdiction, quoted supra.

Prior Awards on this property appear to be dispositive of the issue before us (Awards 7368, 7482, 7963). These Awards denied similar claims on the grounds that exclusivity was not demonstrated; that contractual support was lacking; and that the procedure prescribed in Rule 93 was not followed.

Award 7963, involving the same parties at the same location as in the instant case, dealt with a claim by the Sheet Metal Workers' Organization that Machinists were improperly assigned to the work of disconnecting and reconnecting the steel hydraulic lines running to the manifolds and valves of a burnishing lathe machine in the course of making the machine operable. The Board dismissed the claim, stating:

"Although this Board is certain that the tasks associated with connecting the burnishing lathe or disconnecting and reconnecting hydraulic lines are indeed tasks performed by Sheet Metal Workers, we are not at all certain that these same tasks are contractually reserved to the Sheet Metal Craft under Rule 71 of the controlling agreement, given the instant circumstances, as the rule does not specifically mention machines of the type such as the burnishing lathe here before us for consideration. Rule 71 is specific however when it comes to performing such tasks of the sheet metal trade when applicable to shops, yards, buildings, passenger coaches and engines of all kinds. As Rule 71 appears to be silent with regard to said shop machines per se, it is the opinion of the Board that the instant claim is a dispute of the jurisdictional kind as that contemplated under Rule 93 of the Controlling Agreement of April 1, 1970. As such, the Organization should have proceeded to resolve the craft controversy first with the International Association of Machinists Union, the exclusive bargaining representative of the employees assigned by Carrier to perform the work. In so ruling the instant dispute a jurisdictional matter, this Board acknowledges its lack of jurisdiction to consider the merits of the instant claim and thereby accordingly dismisses the claim."

We concur with the reasoning cited above and, accordingly, rule that the instant claim is improperly before the Board.

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Award No. 8430
Docket 8153-T
2-BNI-SM-'80

A W A R D

Claim dismissed.

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 6th day of August, 1980.