

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

Parties to Dispute: { Sheet Metal Workers' International Association
{ Clinchfield Railroad Company

Dispute: Claim of Employees:

1. Carrier has violated the provisions of Rule 49, the current Agreement and past practice when other than employees of the Sheet Metal Workers' Craft was assigned to carmen and car department laborers. The Carrier assigned the work of performing the duties of filling water tanks on the passenger coaches assigned at Erwin, Tennessee on October 1, October 3, October 11, October 19 and October 15, 1977 in violation of the Agreement.
2. That accordingly, the Carrier be ordered to additionally compensate the following employees, Sheet Metal Workers, T. L. Wilson, in the amount of eight (8) hours at the time and a half rate, L. Watts, for eight (8) hours at the time and a half rate, R. W. Carr for eight (8) hours at the time and a half rate, M. E. Sneed for eight (8) hours at the time and a half rate and K. L. Mashburn for eight (8) hours at the time and a half rate each for this violation of the Agreement.

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 employees 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.

Following a substantial hiatus in operating passenger service, Carrier, in 1969, acquired an old, small steam locomotive which it restored to operating condition and in addition acquired ten (10) passenger coaches. With this equipment, Carrier began running special excursion trains primarily on a charter basis and operating mostly on weekends between Erwin, Tennessee and Spartanburg, South Carolina. It is noted that this operation was seasonal in nature with the majority of trips made during the Fall months, especially in October as during this time of year passengers travelling through the Blue Ridge Mountains were treated to the view of the autumn leaves changing color.

When the trips were operated, the passenger cars had to be serviced and supplied with water prior to leaving Erwin and at the layover point before returning. The specific work of watering coaches entails connecting a water hose to a water faucet where the two are not already connected, then turning the water

on, placing the nozzle in the appropriate receptacle of the passenger coach and allowing the water to run until the holding tank is full. This water is used for drinking and other purposes by the passengers.

In the case at bar, the Organization alleges that ever since the inception of this excursion train operation, Carrier has used employees of its Sheet Metal Craft employed at the Erwin Shop Facility exclusively to perform the work of watering coaches. In support of its position, the Organization cites its Classification of Work Rule, Rule 49 of the Controlling Agreement, effective September 1, 1949, as well as Rule 18, Assignment of Work. These Rules read respectively as follows:

"Rule 49. Sheet Metal Workers' work shall consist of tinning, coppersmithing and pipe fitting in shops, yards, buildings, on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter, (present practice between sheet metal workers and boilermakers to continue relative to gauge of iron), including brazing, pipe and spot welding, soldering, tinning, leading and babbiting, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes, the operating of babbitt fires, oxy-acetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work.

Include regular and helper apprentices in connection with the work as defined in Rule 49."

"Rule No. 18 - Assignment of Work

None but mechanics, leading men, and apprentices shall do mechanics' work as per special rule of each craft."

The Carrier refutes the Organization's contention employees of the Sheet Metal Workers Craft employed at the Erwin Shop Facility performed the disputed work exclusively asserting instead that sheet metal workers (Pipefitters), on occasion supplied the water where their services were required in making minor repairs to the cars as the equipment was old and therefore difficult at times to keep the plumbing systems functional. The Carrier further contends that more often than not, when laborers were sent to the points to clean the cars, they were used to supply water to the coaches. Carrier maintains that it was not, and has never been the case that supplying water to passenger coaches is work which is reserved either by practice or agreement to employees represented by the Sheet Metal Worker's Organization.

As additional support in favor of Carrier's position, the following contentions by both the Carmen's Organization and the Firemen and Oilers' Organization are noted herein respectively: The Carmen assert that since the discontinuance of regular service in the mid 1950's and prior to the institution of this instant

claim, no craft on the property has claimed exclusive right to the watering of passenger coaches on the excursion trains. Rather, the watering of the coaches was done by any employee who happened to be present at the coaches in the performance of work consistent with his classification work rule. In addition, the Carmen argue, the instant dispute is a jurisdictional matter which the Sheet Metal Worker's Organization has failed to resolve through established procedure between itself and the other labor organizations involved. Attempt at such a resolution is a condition precedent, asserts the Carmen, for advancing the claim before the Board. Since the Sheet Metal Worker's Organization chose to completely ignore the jurisdictional nature of the dispute, the Carmen assert the instant claim has been prematurely progressed to the Board and accordingly should therefore be dismissed; The Firemen and Oilers argue that though employees of the Sheet Metal Craft may have occasionally put water into the excursion train neither their Classification of Work Rule nor any past practice support the claim that the disputed work was reserved to the sheet metal workers.

Upon a thorough review of the record it is determined by the Board that the Sheet Metal Workers' Organization has failed in its burden of proof to support its contention that the disputed work is reserved to members of its Craft. Both positions advanced by the Organization, that is, the work in question is covered by the language of Rule 49 and additionally upheld by the meaning of Rule 18 of the Controlling Agreement, and the disputed work is reserved to employees of the Sheet Metal Workers Craft through past practice, are nothing more than mere assertion, which we have noted many times in previous cases, does not constitute fact. The claim is therefore found to be deficient and accordingly we move to dismiss it.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of April, 1981.