

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That the Carrier, under the current working agreement, assigned three (3) maintenance of equipment, hereinafter referred to as M. of E., sheet metal workers to perform work covered by Rule 2, Part B of the Memorandum of Understanding of November 23, 1954. This work assignment consisted of installing insulation on air condition duct work on October 13, 1980.
2. That accordingly the Carrier be ordered to additionally compensate the maintenance of way, hereinafter referred to as M. of W., sheet metal workers T. R. Bryan, Russell Division, and A. R. Hicks, Ashland Division, in the amount of twenty four (24) hours each straight time to be equally divided among them for this work.

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 employes 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 October 13, 1980, at the Carrier's Russell, Kentucky, Raceland car shops, Maintenance of Equipment sheet metal workers were assigned work which the Maintenance of Way sheet metal workers assert belongs to them. This is a time claim for Claimants T. R. Bryan and A. R. Hicks for twenty-four hours each.

The Organization claims the job of installing insulation on air-conditioning duct work at the Valve Seating Shop was improperly assigned. Referring to the Memorandum of Agreement dated November 23, 1954, the Organization points to the following language which, it believes, clearly spells out who shall perform the work in dispute.

"Paragraph 2(b)

The construction, installation and maintenance of ducts suspended or attached to walls or ceilings will be by Maintenance of Equipment forces except the portion of the duct which extends outside the building which will be constructed, installed and maintained by Maintenance of Way employees."

The Organization relies upon this 1954 Memorandum of Understanding and contends the work in question clearly belongs to the Maintenance of Way sheet metal workers and further contends the Carrier has not shown otherwise.

The Carrier avers the claim, as presented, is factually incorrect in that insulation was not installed on the ducts, but rather was purchased with the insulation already attached. Subsequently, the Carrier contends, no evidence has been submitted by the Organization to refute this finding. The Carrier also argues that Claimant Hicks has seniority on the Carrier's Ashland Division and, therefore, has no contractually enforceable right to work in the Russell Division. Finally, the Carrier points out that the applicable Memorandum of Understanding is dated August 23, 1960, but concedes the wording is essentially the same. That agreement, according to the Carrier, specifically recognizes its right to use sheet metal workers from either department to augment those workers available in the other department provided none of the sheet metal workers from the augmented department were cut off at the time. The applicable language of Paragraph 4 is, as follows:

"It is intended that the distribution of work herein outlined will be followed as closely as conditions will permit, but it is agreed that either force may be called on in an emergency, and the right of the Railway Company to use employees from either force to augment the other when no employees of the force being augmented are cut off is recognized."

The Organization is correct in asserting that Paragraph 2(b) of the applicable Memorandum of Understanding (August 23, 1960) reserves the portion of duct extending outside buildings to be worked upon to the Maintenance of Way. However, that same Understanding, in both the 1954 and presently applicable 1960 version, contains clear and unambiguous language which grants the Carrier the right to use employees of either force to augment the other when no employees of the augmented force are cut off. The two Claimants are the only Maintenance of Way sheet metal workers on their respective seniority rosters (Ashland and Russell Divisions). The Organization has not presented any probative evidence to rebut the Carrier's contention that both Claimants were assigned and working elsewhere on the day in question.

Claimant Hicks was on a seniority roster separate and distinct from the Division in which the disputed work was performed, and we find no supporting proof he had any exercisable right to work in the Russell Division.

Notwithstanding the Carrier's contention of factual inaccuracy, this Board is persuaded the language of the 1960 Memorandum of Understanding and particularly Paragraph 4 properly covers the facts and circumstances presented by this claim. Claimant Bryan is the only Maintenance of Way employee on the Russell seniority roster, and he was not in a cut off status on October 13,

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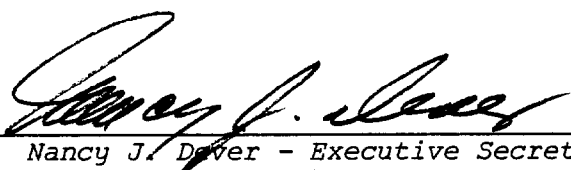
1980, therefore, this Board holds the use of Maintenance of Equipment employe(s) was allowable under the hereinbefore mentioned provisions of the Memorandum of Understanding to augment the Maintenance of Way force. For the reasons set forth above, we deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1984.