

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the current agreement, other than employees of the Sheet Metal Workers' Craft (Carmen) were improperly assigned to perform pipe work consisting of cutting, fitting and installing guard rail and hand rail constructed from 1 1/4 inch pipe installed on scaffolds fabricated at Princeton Shop on October 22, 1981.
2. That accordingly, the Carrier be ordered to additionally compensate Sheet Metal Workers, P. Panashy, J. L. Rumburg, C. W. Keaton and K. Hall in the amount of 24 hours at the time and one half rate 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 employees 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 22, 1981, members of the Carmen's Craft were assigned by the Carrier's supervisors to install handrails made of pipe onto scaffolds fabricated at the Carrier's Princeton Shop.

The Organization filed a claim on the Claimants' behalf, asserting a violation of the agreement and seeking twenty-four hours' pay at the rate of time and one-half; such pay would be divided equally by the Claimant Sheet Metal Workers to compensate them for this work that was allegedly improperly assigned to members of the Carmen's Craft.

The Organization contends that the Carrier violated Rules 30 and 92 of the current agreement when it assigned the work of building the handrails to the Carmen's Craft rather than to the Sheet Metal Workers. Rule 92 provides:

"Sheet Metal Workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings and 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, including brazing, soldering, tinning, leading, babbitting, the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steampipes; the operation of babbitt fires, oxyacetylene, thermit and electric welding on work generally recognized as Sheet Metal Workers' work and all other work generally recognized as Sheet Metal Workers' work."

Rule 30 provides:

"(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work, except that helpers may assist mechanics and apprentices in performing their work, as per special rules of each craft."

The Organization contends that under these rules, the disputed work is to be performed by pipefitters and, in fact, pipefitters have done this work in the past at the Princeton Shop.

The Organization argues that such pipe work is not included in the Carmen's Rule under the current agreement; the Carrier has not shown that this work has been done by any employees but Sheet Metal Workers at the Princeton Shop. The Organization contends that the claim should be sustained.

The Carrier contends that this claim should be dismissed because it involves a principle and issue previously decided, on several occasions, by this Board in the Carrier's favor. Carrier has submitted several previous decisions of this Board in support of its position.

The Carrier further contends that because this claim involves craft jurisdiction, the Carmen's Craft should receive notice of the pendency of this dispute.

The Carrier also argues that the disputed work is not clearly and unambiguously assigned to the Sheet Metal Workers by the current agreement. Moreover, the Carrier points out that Rule 92 refers to pipes which carry air, water, gas, oil, and steam and that the handrails involved here carry none of those elements.

The Carrier maintains that this type of work has been performed at the Princeton Shop in the past by Carmen and other crafts. The Carrier argues further that because of this past practice, the Organization is herein asking the Board for a new rule, and the Board does not have the authority to establish new rules.

The Carrier also contends that assignment of this work is not restricted by the agreement and, therefore, is one of the Carrier's management rights. Also, the Carrier points out that because the Claimants held regular assignments, they suffered no loss. The claim, therefore, is excessive.

Finally, the Carrier contends that the Organization has not shown that the disputed work has been historically performed exclusively by the Sheet Metal Workers. The Carrier argues that the claim should be denied.

This Board has reviewed all of the evidence submitted in this case, and it finds that there has been no violation of any rule on the part of the Carrier.

First of all, as pointed out by the Carrier, Rule 92 does not mention handrails and also outlines restricted work to include "... connecting and disconnecting of air, water, gas, oil, and steampipes." The handrails do not transport anything and, therefore, Rule 92 does not clearly cover the work involved in this claim. No other rule restricting work has been cited by the Organization. Hence, there is no rule that grants the Sheet Metal Workers the exclusive right to perform the work in question--that is, fabrication of handrails.

Secondly, the Organization has the burden of proving that its craft has historically exclusively performed the work in question. The Carrier has offered evidence that other crafts have, in the past, performed work similar to the handrail work done here by the Carmen. The Organization has been unable to rebut the Carrier's evidence in that regard.

Finally, this same issue has been heard by this Board on several occasions in the past. In Award 7147, this Board rejected a similar claim and made under Rule 84, which involved the work of cutting and installing a handrail that had been assigned by the Carrier to the Carmen. Citing an earlier award, Award 5951, the Board denied the claim and stated that the employees have failed to demonstrate their right to the work by past practice.

Similarly, in Award 9990, another handrail case involving the same Organization and the assignment of work to the same third party, this Board held "... the Sheet Metal Workers' organization does not have exclusive claim to the work in question." Moreover, this Board pointed out in that award that none of the conditions, that is, air, water, gas, oil, and steam, applied to pipe work involved in the installation of handrails.

Consequently, based upon all of the above reasons, this Board has no alternative but to deny the claim.

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Award No. 10417
Docket No. 10176-T
2-N&W-SM-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June 1985.