

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Sheet Metal Workers International Association
Parties to Dispute: (
(Seaboard System Railroad

Dispute: Claim of Employees:

1) On or about October 11, 1983, Sheet Metal Workers was stopped from performing their normal recognized main work assigned duties of inspecting (checking) sanders on diesel locomotives for proper function and/or repairs needed.

2) A continuous claim for eight (8) hours per shift (1st, 2nd and 3rd) at time and one-half rate of pay until Sheet Metal Workers are assigned again to perform the inspecting (checking) of sanders on diesel locomotives.

3) Claimants are Sheet Metal Workers W. V. Reed, M. W. Hodge, C. M. Strickland, R. Sullins, B. W. Buchanan, J. Lykes III, D. W. Moore and D. O. Bolling. Claim to be divided equal.

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 were given due notice of hearing thereon.

Claimants are Sheet Metal Workers employed at Carrier's Boyles Shop and Yard at Birmingham, Alabama. On October 11, 1983, Carrier's Master Mechanic O. B. Padgett discontinued using Sheet Metal Workers to inspect sanders on diesel locomotives at the dispatch track. The record indicates that one Sheet Metal Worker had been used to perform this inspection function previously. The sander inspection function was thereafter performed by Machinists. During argument on this matter, the parties indicated that the work was eventually returned to the Sheet Metal Workers. There is no evidence that wages were lost by the Claimants as a result of the assignment of the sander inspection work to the Machinists.

According to the Carrier, checking to see if sanders operate is not a repair function; is not mentioned in the Organization's Classification of Work Rule; does not require a skilled Sheet Metal Worker; and is not a task reserved to that craft on the property. Further, the Carrier asserts that Engineers are responsible for checking the braking system and during the course of pre-testing the locomotive, the sanders are turned on and off by the Engineers and an observation is made from the ground to see that the brakes apply and release properly and that sand is coming from the sand pipes on each unit. In the event system does not work correctly and it is determined that a defective pipe is the cause of the problem, the repair work is then performed by a Sheet Metal Worker. The Carrier has also raised issues concerning the asserted inadequacy of the allegations in the Claim and lack of damages.

The Organization asserts that its members have performed this inspection function at the Boyles Shop and Yard for forty years. The Organization claims violations of Rules 30(a) and 87.

Rule 30(a) provides:

"None but mechanics and apprentices regularly employed as such shall do mechanics' work as per special rules of each craft"

Rule 87 provides:

"Sheetmetal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings, including general office 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 14 gauge and lighter, including brazing, soldering, tinning, leading and babbitting; the bending, fitting, cutting, threading, brazing, connection and disconnection of air, water, gas, oil and steam pipes; the operation of babbit fires, oxyacetylene, thermit and electric welding on work generally recognized as sheetmetal workers' work, and all other work generally recognized as sheetmetal workers work."

Based upon our review of the record, we conclude that the Claim must be denied. The burden of proof is on the Organization to prove all the essential elements of its Claim. That burden has not been met in this case. First, there is nothing in the Rules relied upon by the Organization that specifically grants the sander inspection work exclusively to the Sheet Metal Workers. Second, notwithstanding the assertion of a past practice at Boyles

Shop and Yard for inspection of the sander by the Sheet Metal Workers craft, it is incumbent upon the Organization to demonstrate that such a practice exists systemwide. Where the Rules do not exclusively grant the work to the Organization, the burden is upon the Organization to show that the disputed work has been historically, customarily, traditionally and exclusively performed by it on a systemwide basis. Second Division Award No. 10784. This record does not reveal such a demonstration; instead, the record indicates that other crafts have at times performed throughout the system the sander inspection work involved herein. There is of course no issue in this case concerning repair work on the sander; such work is reserved to the Sheet Metal Workers craft.

In light of the above, it is unnecessary to address the other arguments raised by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy L. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1987.

LABOR MEMBERS' DISSENT
TO
AWARD NO. 11162, DOCKET NO. 10853-T

(Referee Elliott H. Goldstein)

We strongly dissent to the unrealistic approach taken by the Majority when rendering their decision in this award. The Majority completely overlooked that portion of Rule 85 which reads:

"and all other work generally recognized as Sheet Metal Workers' work."

The facts as presented, by signed, sworn, notarized statements from all crafts, proves beyond any doubt that at Boyles Shop and Yards, the recognized practice is that Sheet Metal Workers have always performed the work in dispute. The Majority overlooked these statements and the fact that at Boyles Shop and Yards the Sheet Metal Workers had again been assigned to perform the same work.

The Claim was not for systemwide exclusivity, but only for Boyles Shop and Yards, therefore, the Majority's concept of exclusivity systemwide is way out in left field, completely out of the ball park, as Rule 85 of the current working agreement places no such restriction, as is recognized in Second Division Awards 8004 and 10049.


Further, there are no limitations of Sheet Metal Workers' work to repair work as it seems to be the Majority's indication, as inspection of sanders is as much a part of Rule 85 at Boyles Shop and Yards as repair, and covered by that portion of Rule 85 which reads:

"all other work generally recognized as Sheet Metal Workers' work."

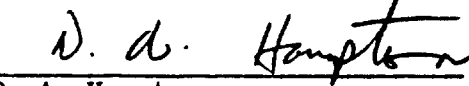
The Majority have completely overlooked a longstanding, recognized practice at Boyles Shop and Yards which has long been recognized by numerous Awards of this Division as being the best way of establishing the intent and understanding of the parties, particularly Awards 974, 1153 and 2603.

It is our position that the Majority have comitted a grave injustice in failing to recognize a longstanding practice at Boyles, particularly the intent and understanding of the parties in the assignment of the inspection for at least forty (40) years at Boyles.

With one stroke of the pen, a practice which has been in existence for forty (40) years at Boyles Shop and Yards, Birmingham, Alabama, has been totally disregarded, and therefore we vigorously dissent.


M. J. Cullen


C. D. Easley


D. A. Hampton


R. A. Johnson


N. D. Schwitalla