

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

(Sheet Metal Workers' International Association
Parties to Dispute: (
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling agreement, particularly Rules 82 and 36 when they arbitrarily assigned the repairing of microphor toilets to the Carmen's Craft instead of to Sheet Metal Workers who have historically performed this work at Barstow, California.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Sheet Metal Worker J. Quenga in the amount of eight hours (8) per day, five (5) days per week beginning November 1, 1982, until this work is returned to the Sheet Metal Workers' Craft.

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.

As third party in interest, the Brotherhood of Railway Carmen of the United States and Canada were advised of the pendency of this case, but chose to file a submission with the Division.

After this matter was docketed with the Board, the Carrier asked that the Carmen be joined as a Third Party. (TCEU v. UP 38 U.S. 157, 1966) This was done, and a Third Party Submission was received and considered.

This matter involves the assignment of work connected with the repair of microphor toilets. This equipment is used in locomotives and cabooses. Toilet repairs are completed throughout the Carrier's system by employees represented by practically every shop craft Organization depending upon location performed and availability of personnel.

At Barstow, California, members of the Carmen's craft were assigned to make repairs on toilets carried in cabooses. Members of the Sheet Metal Workers craft had been assigned to make repairs on toilets carried on locomotives. Prior to November 1982, the time per day devoted to repairing locomotive toilets averaged 2.4 hours. Effective November 1, 1982, all toilet repairs, both locomotive and caboose, were assigned to Carmen. The Sheet Metal Workers filed a grievance on behalf of the Claimant, a furloughed employee, contending the reassignment involved was a removal of work from its craft in violation of its Agreement.

The Sheet Metal Workers contend that members of its craft at Barstow had exclusively performed all the repair work for microphor toilets carried in locomotives. The Carrier admits the repair of locomotive toilets at Barstow was assigned to Sheet Metal Workers, but argues that that craft does not enjoy system wide exclusivity to the work. Accordingly, assignment of such work to another craft that is already doing the same repairs on caboose toilets promotes efficiency and is not a violation of the Sheet Metal Workers' Agreement. The Carmen contend its Organization is entitled to be assigned this work and, also, because this is a jurisdictional dispute between competing shop craft unions, the matter should be resolved as provided in Rule 114 of the September 1, 1974, Agreement.

It is noted that servicing and repairing microphor toilets in either cabooses or locomotives is not listed in the Agreement among the functions of work considered as Sheet Metal Workers' duties. It is also noted that throughout the Carrier's system, Carmen, Machinists, Electricians, and Firemen and Oilers, as well as Sheet Metal Workers do this work on a regular basis without regard to whether located in a locomotive or caboose.

Generally, in claims of this nature, the Organization must show that its craft has an exclusive right to do all the work on a system wide basis. Herein, this has not been done. Instead, we are asked to endorse the notion that "generally recognized" Sheet Metal Workers' duties at a particular location controls the assignment of duties under the Agreement. The difficulty with this concept here is that an initial showing has not been made that repairing microphor toilets is "generally recognized" as Sheet Metal Workers' work.

Servicing toilets at a single point is not enough to establish that the work belongs to a particular craft. In this regard, see Award 55. PLB 2206:


"There is little room for doubt that the organization has established the existence of a custom, practice or tradition of exclusive performance of work of recharging the chemical toilet at Bridge #1 in Pasco, Washington. However, to prevail under a theory of reservation through practice the Organization is required by principles, not of our making, but imposed by the great weight of precedent in this industry, to show such exclusive performance on a system-wide basis."

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.

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