Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11339
SECOND DIVISION Docket No. 10934-T
2-B&O-SMW-'87

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

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

Dispute: Claim of Employes:

1) That the Carrier, under the Current Working Agreement, assigned a carpenter to help the Sheet Metal Worker Foreman in the assignment of hooking up and plumbing of the Carpenter Force's Camp Car, which is a violation of the Current Working Agreement and Rule 114 of the Baltimore and Ohio Railway General Agreement.

2) That, accordingly, the Carrier be ordered to additionally compensate Engineering Department Sheet Metal Worker, R. L. Clary, eight (8) hours pay at straight time rate.

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 Maintenance of Way Employes were advised of the pendency of this case, but chose not to file a Submission.

This dispute originated when the Carrier assigned a Carpenter to assist a Sheet Metal Foreman in some plumbing repair work on December 27, 1983. The plumbing was fixed on one of the Carrier's camp cars located near Chillicothe, Ohio.

The Carrier acknowledges that it used a Carpenter for approximately two hours to perform the work in question. The Organization claims that the work belongs to its members, and that the Carpenter spent more than two hours doing it. A Claim was filed on January 18, 1984 for eight hours' straight time pay.

The Carrier responded to the Claim and argues here that there was not sufficient work "to justify the re-establishment of a Sheet Metal Repairman position or recall of yourself to duty." Although the record is not entirely clear on this point, the Board concludes that the Claimant was furloughed at the time the disputed work was performed, since the Organization states that he was "cut off" at that time.

The Carrier does not dispute that the work in question belonged to the Sheet Metal Workers under the Classification of Work Rule (Rule 114) of the applicable Agreement between the Parties. That Rule gives to the Organization jurisdiction over "pipefitting...on passenger coaches and engines of all kinds."

Instead, the Carrier contends that under the circumstances, it did not violate the Agreement when it assigned a Carpenter instead of a Sheet Metal Worker to perform the disputed work. Part of the Carrier's argument is based upon its assertion that the Carpenter spent only two hours of time on the disputed work. The Organization asserts that eight hours of work were performed. However, the Organization has offered no evidence to support its assertion and since the Organization carries the burden of proving each of the major elements of its Claim, (Second Division Award No. 6893), the Board cannot conclude that more than two hours of work were performed.

The question then is whether two hours of work belonging to the Sheet Metal Workers, but performed by a Carpenter, constitutes a violation of the Agreement. Apparently there were no Sheet Metal Workers assigned to the shift at the time the work was performed. In fact it appears that there was no Sheet Metal Worker position any longer assigned to that shift. Therefore the Carrier would have had to recall the Claimant from his furlough status in order to have a Sheet Metal Worker perform the two hours of work in question.

Under these circumstances the Board concludes that the amount of work involved was de minimis. As this Board concluded in Second Division Award No. 7587, four scattered instances of work consuming an hour or so each, were not sufficient to establish a violation of the Work Rule, at least where the Claimants had been furloughed and the Shop was shut down, except for a skeleton maintenance crew. A similar situation existed in the instant case and warrants the same conclusion.

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 23rd day of September 1987.