

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

(Sheet Metal Workers International Association  
PARTIES TO DISPUTE: (  
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

1. That the Carrier, under the Current Working Agreement, assigned the Carmen craft work that belonged to the Sheet Metal Workers at the Huntington Locomotive Shop, Huntington, W. Va., which is a violation of the Current Working Agreement and Rule 126 A of the Chesapeake and Ohio Railway General Agreement.

2. That accordingly, the Carrier be ordered to additionally compensate Sheet Metal Workers, Cecil G. Tatum, K. V. Swepston, P. V. Harris, T. N. Wilson, D. C. Mullins, J. S. Mullenax, Jr., E. L. Sparks and M. A. Thompson, ten (10) hours straight-time pay each.

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 Railway Carmen of the United States and Canada was advised of the pendency of this dispute but chose not to intervene.

There is no dispute that between July 15, 1985 and August 16, 1985 Carmen were assigned and did construct a tool room in the Huntington Locomotive Shop. After construction of the frame, Carmen nailed 16-gauge expanded metal sides around it.

By letter dated August 19, 1985, the Organization filed a claim in which it maintained that the use of 16-gauge expanded metal in the shop structure has historically belonged to Sheet Metal Workers.

This Board's review of the Rules which the Organization maintains supports its position finds no specific language referencing "expanded" metal. Nothing in the Classification of Work Rule explicitly relates to 16-gauge expanded metal.

The record further discloses that the Carrier stated on two separate occasions that "carmen have used expanded metal for years as covering and guards" which was not refuted on the property. In addition, the Carrier included a statement from a Supervisor which stated that Carmen have used the expanded metal in the Huntington Shop. This statement was also not refuted. This Board has consistently held that assertions which are not refuted are accepted as fact.

This Board finds that the Organization has produced no probative evidence in support of its claim that the work is historically the work of Sheet Metal Workers. There is no record established by the Organization that the Carrier improperly assigned the work. The Rule does not include expanded metal.


As such, this Claim must be viewed by this Board as a jurisdictional dispute. Supplement 6 of the Agreement requires that the Organizations meet first to resolve the dispute before presenting a Claim for adjustment with the Carrier. The record indicates this was not done and the Claim before this Board is therefore defective. The Board has no alternative but to dismiss the Claim (Second Division Awards 11473, 11364, 11229, 11070).

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of February 1989.