Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11688
SECOND DIVISION Docket No. 11373-T
89-2-87-2-34

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

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(
(Northeast Illinois Regional Commuter Railroad
( Corporation

STATEMENT OF CLAIM:

1. The Northeast Illinois Railroad Corporation violated the provisions of the current agreement, most flagrantly Rule 77, when they improperly assigned other than Sheet Metal Workers to drill and install 16 gauge stainless steel sheets of flat iron on coach 302 on March 22, 24 and March 25, 1986, and all subsequent dates on other coaches in a continuing claim.

2. That accordingly the carrier compensate Sheet Metal Workers Daniel R. Balestri, Dennis Hill and Tom Nazario in the amount of 30 hours pay at the rate of time and one half the prevailing rate of pay for the above dates and further it is requested that the claimants be paid for the equal time on subsequent dates that the violations occurs until corrections and check of the records be made to determine the amount of time due on subsequent dates.

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.

The instant dispute alleges Carrier violation of Rule 77, Classification of Work. Claim was filed on behalf of Sheet Metal Workers declaring that Carrier had removed Agreement protected work and given it to the Carmen. The work consisted of installing 16 gauge 2' by 12' stainless steel sheets (metra signs) by use of drills, taps and self taping stainless sheet metal screws. The Claim dated April 2, 1986 related to work done on Coach #302 on three dates as well as "for the equal time on subsequent dates that the violation occurs..."

During the progression of this Claim on the property, the Organization presented a handwritten and signed statement by the four Carmen who did the work on Coach #302 stating that they had "never installed any type of sheet metal to any of the passenger cars at Western Avenue until this project (METRA SIGNS) came about." The Organization further listed additional cars, dates and Carmen doing the contested work.

The Carrier denied any violation arguing that the disputed work did not belong exclusively to Sheet Metal Workers. It argued that the work had been correctly assigned to Carmen as per their Rule 85. The Carrier stated that Carmen have applied and removed metal letter boards for years, as such was decorating and lettering. It provided letters of support.

The Carrier further argued that the additional thirty Claim dates on other cars were not part of the original Claim. The Carrier maintained that, not only was an amended Claim an improper attempt to create a continuing Claim, but also that the April 8, 1948 Memorandum of Agreement on jurisdictional procedures had been violated. As this Claim was a jurisdictional dispute it had to be presented first to the Carmen before being forwarded to the Carrier. Failing in all of these respects, the Claim was denied.

The Brotherhood of Railway Carmen entered a Third Party submission arguing that the disputed work was their work under their Agreement Rule 85. The Carmen attached a signed supporting statement. They also argued that the Claim was a jurisdictional dispute and should be dismissed for failure to follow Agreement procedures for the handling of jurisdictional disputes.

After a careful review of this record the Board finds that the work belongs to the Sheet Metal Workers. Carmen's work Rule 85 quoted in the October 10, 1986 letter presented on property contains no language whatsoever which supports the Carmens' position. There is no Agreement language on the installation of 10 gauge sheet metal as per the instant circumstances. The signed statement by ten (10) Carmen refers to the work of removing, repairing and replacing. Nowhere on the property was any evidence presented that letter boards were removed, repaired or replaced.

The disputed work was the installation of a new large sheet metal sign. Rule 77 of the Sheet Metal Workers Agreement states in pertinent part that:

> "Sheet metal workers work shall consist of ... the building, erecting, assembling, installing, dismantling and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black planished, pickeled and galvanized iron of 10 gauge and lighter ... and all other work generally recognized as sheet metal workers' work."

The disputed work was clearly the installing of sheet metal. The gauge of the metal as evidence in the record was "10 gauge and lighter." Rule 77 encompasses the disputed work.

The Organization has established substantial proof that said work belongs to its' employees. It introduced unequivocal statements by the four Carmen involved, separate statements by Sheet Metal Workers and additionally, statements by sixteen employees of various crafts including Electricians, Carmen and Sheet Metal Workers attesting to historical exclusivity of the disputed work by Sheet Metal Workers at the Western Avenue coach yard. It refuted the Carriers' four letters which this Board notes were all general statements referring only to the years 1974 through 1976.

Nowhere on the property did the Carrier directly refute the evidence presented by the Organization. It did not refute the gauge of the metal or the statements by employees supporting the Sheet Metal Workers. The Board finds that the disputed work is covered by Rule 77 and as supported in the evidence of record it is generally recognized as Sheet Metal Workers work. As such, no jurisdictional dispute exists. The Organization has provided substantial evidence of record to carry its burden of proof.

The Carrier has further argued on property and before this Board that this is not a continuing Claim, but only a Claim as presented for one particular coach on three particular dates. The Board disagrees. Throughout the progression of this Claim on the property, the Organization stated that the Claim was for Coach #302 and:

> "Further its also requested that the claimants be paid for the equal time on subsequent dates that the violation occurs until corrections and a check of the record be made to determine the amount of time due on subsequent dates."

When challenged, the Organization stated that the word subsequent was clear and that "this is a continuing claim." The Board agrees and thereby sustains Part 1 of the Claim including all subsequent dates on other coaches. It is well known that a continuing Claim is one repeated on more than one occasion (Second Division Award 11471; Third Division Awards 14450, 11167). The alleged violation was the installation of signs. The Organization indicated on property that this was more than just the work on Coach #302 for three dates. It listed numerous additional coaches and dates.

As for Part 2 of the Claim, the Board finds the Claim is excessive. Claimants are to be paid at their straight time rates of pay for the lost work opportunity in this violation of the Agreement.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

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

CARRIER MEMBERS' DISSENT
TO
AWARD 11688, DOCKET 11373-T
(Referee Zusman)

The claim in this dispute involved a jurisdiction of work matter between the Sheet Metal Workers and the Carmen. The parties had adopted specific agreement provisions to deal with such disputes. The requirements of the April 8, 1948 Memorandum of Agreement are, in part:

> "It is agreed that in connection with the Schedule Agreements which become effective September 1st, 1949, the following Memorandum of Agreement dated April 8th, 1948 will continue in effect without change:....
>
> > If any craft makes a claim for work now being done by another craft and an agreement is reached between the two crafts, such agreement will be submitted to Management by the System Federation, and Management will be asked to accept that agreement as an interpretation of the classification of work rules of the crafts involved. Until this is done, no work is to be transferred from one craft to another.
>
> that each craft, represented by the parties signatory hereto, will continue to perform each item of work they have been performing under the Agreement of December 15th, 1926 and any claim made by another craft for any item of work will be handled between the two crafts. If an agreement is reached between the two crafts, such agreement will be submitted to the Chief Mechanical Officer, or his representative. It is understood that no work will be transferred from one craft to another until the procedure outlined above has been followed and Management has agreed to accept any agreement that may be made between the two crafts with regard to transfer of work from one to the other."

The Majority acknowledges the argument of the Carrier and the Third Party in this regard at page 2 of the Award, but then ignores the requirements of that specific contract between the parties.

This Board does not have the authority to ignore the agreement of the parties. Here, the Majority, by failing to abide by the dictates of the

parties, has exceeded its jurisdiction and Award 11688 clearly has not resolved the matter but has generated further conflict.

In recent Second Division Award 11658, this Division again stated its position on jurisdictional disputes:

> "Dismissal is mandated when this Board is confronted with a jurisdictional dispute and dispute resolution procedures have not been complied with (Second Division Awards 11486, 11364, 11229, 11070, 11035). Appendix 10 on Jurisdictional Dispute Procedures clearly applies to these parties and requires that when a dispute involving jurisdiction of work arises between crafts, the Organizations will resolve the dispute. Herein, there is no evidence that the Organization followed Appendix 10. Accordingly, the Claim must be dismissed." (Emphasis added)

See also Second Division Awards 7368, 7482, 10050, 10053, 10090, 10091, 10182, 10495, 11035, 11070, 11229, 11344, 11364, 11390, 11452, 11472, 11473, 11486, 11656 and 11657.

Second, the "Metra" signs were similar in function to letter boards, wood or metal, that had been serviced by the Carmen over the years on many of the cars acquired by this company for commuter operations. As the Carrier pointed out on the property:

> "Please be advised that the work of removing, repairing, or replacing wood or metal letter boards utilized for application of numbers or logograms, constructed of acrylic or other type material having a pressure sensitive adhesive backing or stenciled with paint, identifying the ownership or lessee of a passenger or freight car is work that is recognized as that accruing to the carmen's craft."

The Sheet Metal Workers did not dispute that the application of

> "metal letter boards [with] acrylic or other type of material with a pressure sensitive back, stenciled, painted, hand painted ownership, etc. was not and is not part of the claim..."

Yet, that is exactly the kind of sign that was installed. The Sheet Metal Workers' insistence on the gauge of metal preservation is met head on with the

Carmen's installation of such similar signs on other equipment in the past. To argue that one who has the right to remove, repair or replace does not have the right to install same is a distinction without reason.

The Sheet Metal Workers' Rule 77 reads in part:

> "...on passenger coaches...the building, erecting, assembling, installing, dismantling and maintaining of parts..."

Carmen's Rule 85 states in part:

> "...building, maintaining, dismantling, painting...all passenger...cars, both wood and steel...painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint..."

Obviously, the installation of a metal sign on a passenger car could arguably fall to either craft. To resolve such matters the parties entered into the April 8, 1948 Memorandum of Agreement. The Majority here has focused on the "metal" aspect to sustain the claim while ignoring that what was installed was a sign. "Historical exclusivity" does not exist in this instance because the Organization notes that this was a <u>new installation</u>.

Finally, the claim initially filed on the property and as filed with this Board was for three (3) specific dates and work on car #302 done by 3 Carmen. This Board can only adjudicate the dispute as filed.

The Majority notes that the "violation was the installation of signs" (page 3). But the claim filed initially on the property was only for work on Coach 302. Work was done on coach 302 on only three dates. No subsequent work was done on coach 302. Other coaches were never made part of the claim as initially filed and certainly no work was done <u>on coach #302 after March 25, 1986</u>. The Organization in its appeal to the Director Labor Relations stated:

"The Northeast Illinois Railroad Corporation NIRC, the Carrier violated the Current and Controlling Agreements when the carrier improperly assigned other than Sheet Metal Workers' to 'install stainless steel sheets on passenger coach #302 on the dates of March 22, 24 and March 25, 1986'. at Western Avenue Coach Yard and Shop."

No claim was ever filed for work on any passenger coach other than coach #302. In fact, 17 of the other cars subsequently claimed, were for dates prior to the Organization's initial claim. If in fact this was a continuing claim, as the Organization alleges, then why were not these other cars listed in the original claim. The initial claim and the subsequent list were both prepared by the same local chairman. The simple answer is that the Organization filed one claim involving one passenger coach on three (3) specific dates, and thereafter attempted to enlarge the claim. This Award rewards the Organization's deficiency.

Had the majority followed the ample precedent of this Board, a proper decision would have been rendered and there would have been no need for this dissent.

P. V. Varga

M. W. Fingerhut

R. L. Hicks

M. C. Lesnik

J. E. Yost