Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 11967
SECOND DIVISION Docket No. 11624-T
90-2-88-2-110

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

DISPUTE: CLAIM OF EMPLOYEES:

The Chicago and North Western Transportation Company, hereinafter referred to as the Carrier, violated the provisions of the current and controlling agreement, in particular Rules 29, 53 and 103, when they improperly assigned other than Sheet Metal Workers to perform Sheet Metal Workers work involved in the inspection of locomotives on the running repair track. The work consisting of the connection and dis-connecting of air hoses between the locomotives, the inspecting and repairing of the locomotives sanders and toilets, beginning on July 3, 1987.

THAT ACCORDINGLY THE CARRIER BE ORDERED TO:

Compensate Sheet Metal Workers S. Pollack, J. Tinsley, V. Rocha, A. Lomeli, M. Dominguez, N. Sundblom, G. Ford, G. Ellis and H. Nguyan in the amount of eight (8) hours pay per shift, for each shift that the violations occurred, divided equally among the claimants and further it is requested that the claimants be compensated for equal time on subsequent dates that the violations occur until corrected and that a 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.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute, but chose not to intervene.

A Claim was filed on July 11, 1987 by the Local Chairman of the Carrier's Proviso Diesel Shop on grounds that others than Sheet Metal Workers were being assigned to do "...running and inspection work belonging to Sheet Metal Workers." The work identified in the Claim was the coupling and making up of air hoses between units, inspection and repair work on sanders, and dumping of toilets. Allegation was that in not assigning this work exclusively to Sheet Metal Workers after July 3, 1987 the Carrier was in violation of Rules 29, 53 and 103 of the current Agreement. These Rules read as follows:

"RULE 29

MECHANIC'S APPRENTICES, DOING CRAFTMEN'S WORK - WHEN

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

At a point where it is proved to the satisfaction of the parties to this agreement that more than two hours' work is done in any day or night shift in any one day, based on the average of one week, a mechanic will be employed.

This does not preclude work being performed by car department mechanics-in-charge assigned to outlying points at which the force does not exceed five men, or in train yards."

"RULE 53

PERFORMING WORK - WHO

Mechanics' work as defined in the special rules of each craft will be performed by mechanics, regular and helper apprentices to the respective crafts."

"CLASSIFICATION OF WORK

103. (1) Sheet metal workers work shall consist of tinning, copper-smithing, and pipefitting in shops, yards, building 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 10 gauge and lighter, including brazing, soldering, tinning, leading, and

babbitting, the bending, fitting, cutting, threading, brazing, connection and disconnecting of air, water, gas, oil and steampipes; the operation of babbitt fires; oxyacetylene, thermit and electric welding on work generally recognized as sheet metal workers' work and all other work generally recognized as sheet metal workers' work."

After the Claim was denied by the Division Manager it was appealed. On appeal the Organization included signatures of 53 employees of various crafts who signed a statement with the following language: "...it was never part of (non-Sheet Metal Workers' jobs) to cut and hook up air hoses between units ...(nor) to assist Sheet Metal Workers on their daily inspection" prior to July 3, 1987. The General Chairman stated to the Carrier that the work in question was "never performed by other crafts in or around the confines of the Proviso Diesel Shop." The Organization also introduces an August 4, 1987 memo from the Manager - Motive Power of the Carrier's Eastern Division which states, among other things, that "Hostlers (would) be required to cut and/or MU locomotives as directed by Shop Supervisors." According to the Organization this was formerly Sheet Metal Workers' work which was now being assigned to Hostlers. In November of that same year the Organization received information from the Brotherhood of Firemen and Oilers that since members of that craft were now being asked to cut and add air hoses between locomotives they were also seeking appropriate rate of pay for such work. The Firemen and Oilers requested clarification from the Sheet Metal Workers International Association if this Organization had the right "to claim this work by Agreement or any system-wide practice." Fifty-three members of other crafts (Machinists, Laborers, Electricians, etc.) never stated that they never did any of this work, but they did state, in a prepared statement, that the work in question was "never part of their job."

A review of the Rules at bar shows that the Classification of Work Rule does not specifically cite sanders and toilets but it does reference "all other work generally recognized as sheet metal workers' work." As a specific matter, there is insufficient evidence with respect to exactly how long it took other crafts to do this work. The Carrier states that the sander and toilet work could be little more than turning a "toggle switch" on or off, or "pulling or kicking open the dump valve on the toilet." This is not denied by the Organization. Thus such work could reasonably fall under de minimus doctrine supported by arbitral precedent in this industry (Second Division Award 11925).

The cutting and hooking up of hoses between units is a separate matter. A study of the record does not support the conclusion that the work complained of here was exclusively reserved to Sheet Metal Workers on system-wide basis. In addition to Proviso, the Carrier also has diesel shops at Marshalltown and Council Bluffs (Iowa) and in correspondence dated March 25, 1988 the Carrier's officer states to the General Chairman of the Organization

that work of the type at bar in this case is not performed by Sheet Metal Workers but by members of other crafts at those shops. In response to this the Organization contests the accuracy of this contention but only with respect to repairs on the sanders and toilets as the General Chairman's letter dated April 26, 1988 to the Carrier makes clear. That letter also states that the work in question is done at the Carrier's M-19A Diesel Repair Shop but that does not materially change conclusions to be drawn here by the Board. The principle of exclusivity and the application of a Rule exactly like Rule 103, in this case, has already been ruled on by the Board on another property and the Board finds such precedent persuasive. In Second Division Award 10751, for example, the Board stated, with respect to such Rule, that:

> "...this Board has consistently held (that) the burden is on the Organization to prove by competent evidence that the work it exclusively claims has been exclusively reserved to the Sheet Metal Workers system-wide...'historically, traditionally, and customarily'."

As earlier precedent that Award cites Second Division Awards 5525 and 5921.

On basis of the record as a whole the Board must conclude that the Claim here before it cannot be sustained.

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 19th day of December 1990.

Labor Members' Dissent

To

Award 11967 Docket 11624-T

Referee Edward L. Suntrup in Award 11967 Docket 11624-T predicates his decision on this work not being exclusively reserved to Sheet Metal Worker's on a system wide basis. The decision in this dispute based on that conclusion is grossly in error and we vigorously dissent.

As the record reflects, the Sheet Metal Workers have performed this work exclusively at this location. The Carrier and other crafts have so recognized that same was Sheet Metal Workers' work pursuant to the terms of the agreement presently in effect wherein it states that Organization's Member will perform "all other work generally recognized as Sheet Metal Workers' work."

The conclusion that every item of work now performed by the Sheet Metal Worker's or for that matter any craft must be performed on a system wide basis is farcical.

This hypothesis if assumed to be true would in effect negate the Rule as written, as there are now many points on a system where all crafts are not employed and some work that has historically been performed by that craft at all locations is performed by others.

The assertion of necessity to prove system wide exclusivity does deprive the employees of work historically performed by them at a point or points were they are employed and accedes to the Carriers position of totally disregarding the agreement and historical practices at that point.

Furthermore, the language of the agreement would not have included the language "all work generally recognized" if it was not meant to include work historically performed and not specifically enunciated in the Rule.

The Referee, by reaching his conclusion predicated on system exclusivity results in incongruous interpretation of the agreement. Therefore, the decision in the instant Case severely undercuts the agreement and demonstrates that the finding in Award 8004 clearly express the intent of the agreement and enforced them as required wherein it was concluded:

> " We believe, moreover, that it is at once unnecessary and unwise to make a broad and far-reaching determination as to whether or not the claimed work falls under umbrella of the exclusivity doctrine. By proper view, we believe, the case does not raise a question of universal applicability at all of the Carrier's locations and throughout its trackage. By proper view, rather, the case in confined to a particular location with its particular personnel and its particular jurisdictional practices. We are so proceeding and so deciding the case.

> We grant that this narrowing is not without interpretative overtones. We are in effect saying that the concluding language on Rule 94 - "and all other work generally recognized as Sheet Metal Worker's work" - is properly applied on a per-location basis. We think it is the right approach. For the contrary approach would require the uncovering of the practices at all of the Carrier's operations and would mean that any exceptional practice - no matter how "hinterland" in character and no matter how explainable by unusual and compelling underlying circumstance - would be of governing effect. It would mean, in other words, that long-followed customs defining Sheet Metal Workers' turf at numerous Carrier locations are subject to destruction by a mere showing that a contrary custom exists at some other Carrier location. In turn, this would either permit the tail to wag the dog, in about as non-sensical a fashion as is imaginable, or would make it incumbent on the Organization - to the detriment of all concerned - to tolerate no exceptional arrangement, even where such arrangement might be wholly acceptable to the Organization's local members and representatives."

For the above reasons, it is apparent that the majority conclusion in this Case is irrelevant to the facts of record and has resulted in a palpable erroneous Award.

We Dissent to the findings in Award 11967 .

Dan D. Hunter

R. E. Kowalski

Mark Filipovic