

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12075  
Docket No. 11598-T  
91-2-88-2-71

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:

The Chicago and Northwestern Transportation Company, hereinafter referred to as the Carrier, violated the provisions of the current and controlling Agreement, in particular Rules 29, 53, 102 and 103, when they improperly assigned Machinists to install 18 gauge sheet metal roof vents on some of the Carrier's fleet of locomotives beginning on or about March 11, 1987.

THAT ACCORDINGLY THE CARRIER BE ORDERED TO:

Compensate Sheet Metal Workers M. E. Ludwick, P. G. Stahlnecker, D. W. Doebelin, S. D. Miller, M. G. Rau, S. K. Danner, T. L. Townsend, R. J. Jones, B. D. Tyree and R. L. Neuman, hereinafter referred to as the claimants, in the amount of four-hundred and sixty-four and one-half hours (464 1/2) pay at the straight time rate, equally divided 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 the subsequent dates that violations occurred.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 Claim filed by the Organization stems from the Carrier's assignment of venting work to members of the Machinist Craft at the Carrier's Council Bluff, Iowa facility. Machinists were assigned to the cutting of 10 and 22 gauge sheet metal, and the installation of 18 gauge metal roof vents to complete a locomotive roof vent modification program. The Organization alleges that the work belonged to the Sheet Metal Worker craft. The Claim alleges violation of Rules 29, 53, 102 and 103 of the applicable Agreement. These Rules read, in pertinent part, as follows:

"RULE 29

Mechanic's Apprentices, Doing Craftmen's Work - When

None but mechanics and apprentices regularly employed as such, shall do mechanic's 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."

"RULE 102

Qualifications

Any man who has served an apprenticeship, or has had four or more years' experience at the various branches of the trade, who is qualified and capable of doing sheet metal work or pipe work as applied to buildings, machinery, locomotives, cars, etc., whether it be tin, sheet iron, or sheet copper, and capable of bending, fitting, and brazing of pipe, shall constitute a sheet metal worker."

"RULE 103

Sheet Metal Workers Work

Sheet Metal Workers' work shall consist of tinning, coppersmithing, and pipefitting in shops, yards, and buildings; on passenger coaches 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 (present practice between Sheet Metal Workers and Boilermakers to continue relative to gauge of iron) including brazing, soldering, tinning, leading, and babbitting the bending, fitting, cutting, threading, brazing, connecting, and disconnecting of air, water, gas, oil, and steam pipes, the operation of pipe threading machines; oxy-acetylene, thermit, and electric welding on work generally recognized as Sheet Metal Workers' work, and all other work generally recognized as Sheet Metal Workers' work."

Absent resolution of this Claim on the property it was docketed before this Board for final adjudication. The Board advised the International Association of Machinists and Aerospace Workers of its right to submit a Third-Party Submission in accordance with Section 3, First (j) of the Railway Labor Act. A Third-Party Submission was forwarded to the Board.

The facts of this case are as follows. Beginning in 1983 a locomotive roof vent modification program was begun by the Carrier, first on low horsepower locomotives at various locations, and then on high horsepower locomotives at Council Bluffs. Following is an outline of work done by years:

<u>Units Installed</u>	<u>Location</u>	<u>Date</u>
90	Des Moines	1983/84
92	Minneapolis	1983/84
17	Marshalltown	1984/85
334	Council Bluffs	1987/88

According to the Carrier, members of the Machinist craft performed almost all of the above vent modifications, with the exception of 16 of them at Council Bluffs and it was acknowledged by the Carrier, and unrefuted by the Organization, that at certain other locations both Machinists and Sheet Metal Workers had performed the work. Exceptions to such practice were not taken by the Organization, however, at Council Bluffs or any other location, until April 7, 1987, when the instant and first Claim was filed.

The position of the Carrier is that the Organization can have no Claim to exclusivity over the work at bar. The Carrier argues that the Machinist's Classification of Work Rule 62 permits the assignment of work of the type here at bar to members of the Machinist craft. Also this work had been performed by Machinists since 1983 without exception taken by the Organization until the filing of the instant claim.

After reviewing the record the Board concludes that the Sheet Metal Worker's Classification of Work Rule 103 does not give their craft exclusive jurisdiction over this work because of reference therein to the gauge of metal (10 gauge and lighter).

Since Agreement language does not exclusively assign this work to the Organization, a second avenue available to establish jurisdiction is a showing of system-wide practice reserved "historically, traditionally, and customarily" to this craft. (Second Division Awards 5525 and 5921.) No such practice has been established. The Organization argues that at many locations where Machinists had been performing the aggrieved work there were no Sheet Metal Workers employed. Such argument is not determinative in the instant dispute. The Organization is free to police its Agreement and file grievances regardless of the level of employment at a particular location.

On the record as a whole, the Board cannot sustain the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1991.

Labor Members' Dissent

To

Award 12075 Docket No. 11598-T

The Referee in this award totally ignored the provisions of Rule 103 when he ruled that it and the agreement was inapplicable in this matter in question.

The record clearly reveals, as stated by the Referee on page 2, this assignment of 10 and 22 gauge Sheet Metal is clearly defined in Rule 103.

Therefore, to imply that the clear language of Rule 103 does not require the assignment of this work in dispute to the Sheet Metal Workers' craft negates the rule.

This Referee again in his convoluted decision on Page 4, simply disregards the rules and agreement. The record clearly indicates the fact that this was Sheet Metal Work as defined in the agreement both as to fabrication and installation.

The holding that a system-wide practice was necessary tortures the intent of the agreement. As a system-wide practice has not been in existence historically since the first agreement negotiated on the railroad.

The current agreement govern the employment of Sheet Metal Workers at the point employed and recognizes and preserves the rules governing seniority, rates of pay and assignment of work. To propose that a grievance be filed at a location when no Sheet Metal Worker's are employed, as he should well know from prior awards would be summarily denied.

This award defies all intellectual logic and the referee's assumed familiarity and experience with the Shop Craft Rules, should have provided him with the expertise to have a correct evaluation of the dispute in this instant case.

We vigorously Dissent.

Billy J. Gossitt

Mark Filipovic

Ronald E. Kowalski

Shelia A. Heen