

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation violated the provisions of the current and controlling agreement, in particular Rules 1 and Letter 1 of said agreement when they improperly assigned other than Sheet Metal Workers the work of cutting, welding and repairing 16 gauge stainless steel sheet metal wiper covers.

2. That accordingly, the Carrier be required to compensate Sheet Metal Worker G. Henderson in the amount of four hours pay at the pro rata rate for the above listed violation which occurred on July 12, 1989.

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 International Brotherhood of Boilermakers and Blacksmiths was advised of the pendency of this dispute, but chose not to file a Submission with the Division.

The basic facts of this case are set forth as follows:

The Organization filed a claim on July 14, 1989, wherein it charged Carrier with violating the Agreement, particularly the Classification of Work Rule and the Beech Grove Scope Rule dated March 31, 1975. Specifically, the Organization contends that such violation occurred when Carrier assigned a Boilermaker represented by the International Brotherhood of Boilermakers and Blacksmiths to weld up holes, and cut and repair 16 gauge stainless covers

for the windshield wipers of locomotives. It points out that the 16 gauge work has been historically performed by Sheet Metal Workers at the Beech Grove facility and observes that under Rule 1 of the Agreement, employees will ordinarily perform work traditionally performed by that craft at that location pending adoption of a national classification of work rule. It further states in its August 28, 1989 appeals letter:

"The Beech Grove Shop was formerly a railroad facility governed by the System 54 Agreement which had a classification of work rule that states 'Sheet Metal Workers work shall consist of tinning, copper-smithing and pipefitting in shops, yards, buildings, on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling (for repairs only) and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gage or lighter .. and all other work generally recognized as Sheet Metal Workers' work.'"

As the claim progressed, the Organization reiterated this stance, but noted that Carrier disregarded the second paragraph of Letter No. 1 of the September 1, 1977 Agreement. This provision reads:

"In order to provide for the orderly performance of work during the negotiation of the national classification of work rule, the parties have agreed to continue to perform work at each facility as it has been performed in the past under the railroad agreements, if formerly a railroad facility, or, if a new Amtrak facility, it will be performed as it has been performed at Albany/Renesselar."

It cited numerous Second Division Awards to support its interpretative positions: 8979, 6544, 6594, 7083, 1359, 8111, 2372 and 11688. By letter dated March 27, 1990, the Organization submitted an attestation statement signed by Sheet Metal Workers at the Beech Grove Facility. It reads:

"We the undersigned employees belonging to Sheet Metal Workers Local 179 and working at Amtrak's Beech Grove, Indiana Maintenance Facility hereby state by signature below that to the best of our knowledge all fabrication and work concerning windshield wiper covers for locomotives which are made of 16 gage stainless steel has always been performed at this facility by employees of the Sheet Metal Workers Craft except on July 12, 1989 when a member of the Boilermaker craft was observed unjustly and improperly repairing these covers."

Carrier contends that the Organization has not established exclusivity via the accepted demonstrations of proof and disputes the Organization's reliance on the work classification rule negotiated by the Organization and the predecessor railroad. It states in its April 27, 1990 denial letter:

"Amtrak cannot be expected to adhere to a rule we did not negotiate and which was not enforced under the predecessor railroad."

It further disputes the Organization's claim of locational exclusivity arguing instead that other crafts at this facility have been assigned work on 16 gauge material. It submitted a letter dated August 18, 1989 signed by the Local Chairman of the Boilermaker Organization to affirm this position and a denial letter dated July 18, 1989 to the Carmen's Organization claim to construct AR10 junction boxes of 16 gauge stainless steel. The Boilermakers letter reads:

"Members of the Boilermaker Craft have utilized 16 gauge metals of various types for several years at this facility to construct and refurbish a variety of projects."

It also wrote in its September 7, 1990 letter to the Sheet Metal Workers General Chairman:

"Further research has uncovered additional information that supports our position that the language cited by the Organization is neither applicable or controlling. Enclosed are thirteen appeal denials, signed by then Corporate Director Labor Relations, J. W. Hammers, Jr., and dated either February 19 or 27, 1981. These denials involve a variety of tasks which involved 16, 18, 20 and other light gauge metals and were assigned to Carmen in late 1979 and early 1980. At that time, as now, Amtrak maintained that Rule 1 requires that the Organization prove that the specific work in question was traditionally and exclusively assigned to sheet metal workers at Beech Grove Shop. These claims were not progressed to arbitration.

We bring these letters to your attention to demonstrate the Organization's prior acquiescence of the fact that some work involving 16, 18, and lighter gauge metals has not been traditionally and exclusively assigned to sheet metal workers. Further, these letters demonstrate that over nine years ago the Organization chose not to contest Amtrak's position that the task and not the material is the proper focus for claims alleging violation of Rule 1."

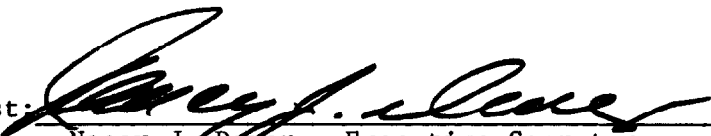
In considering this case, the Board concurs with Carrier's position. We have carefully reviewed the painstaking impressive arguments advanced by the Organization, but we cannot conclude that the Sheet Metal Workers have exclusive rights to the work at the Beech Grove Facility. It appears very strongly that other crafts have frequently performed work on 16 gauge materials and these persuasive conflicting indications argue against any positive finding for the Sheet Metal Workers. It would be injudicious for us to rule otherwise in view of this jurisdictional conflict.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1992.