

CORRECTED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12522
Docket No. 12139-T
93-2-91-2-9

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International
(Association
(Terminal Railroad Association of
(St. Louis

STATEMENT OF CLAIM:

- "1. That, under the controlling agreement, it was improper for the Carrier to assign other than Sheet Metal Workers the work of removing, installing, maintaining, repairing, disconnecting, connecting appurtenances connected with automatic switch heaters in the Carriers' yards.
2. That accordingly, the Carrier be ordered to additionally compensate Sheet Metal Workers B. Hall and V. Levandowski eight hours each at the current pro rata rate for this violation."

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 employe 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 of Maintenance of Way Employes, was advised of the pendency of this dispute, and did file a Submission with the Division.

On February 21, 1990, the Carrier assigned members of the Maintenance of Way, the work of dismantling and removing switch heaters and shields from two switches located at its North Market Street Interlocking facility. The Organization contends that Rule 79, the Sheet Metal Workers' Classification Rule and past practice exclusively reserves the work on switch heaters to the Sheet Metal Workers.

Rule 79 provides as follows:

"Sheet Metal Workers' work shall consist of tinning, copper smithing and pipe fitting in shops, yards, buildings, ...the maintaining of parts made of sheet copper, brass, tin, zinc, white metal, black, planished, pickled and galvanized iron of ten gauge and lighter ..., including brazing, soldering, tinning, leading and babbiting, the bending, fitting, cutting threading, brazing, connecting and disconnecting of air, ..., water gas, oil and steam pipes; ..., on work generally recognized as Sheet Metal Workers' work and all work generally recognized as Sheet Metal Workers' work."

Rule 79 does not refer to any work associated with switch heaters. Thus, the Classification of Work Rule is of no assistance to the Organization.

The inquiry therefore turns to whether the work in question is Sheet Metal Workers' work to the exclusion of all other employees and other classes and crafts. It is undisputed that in the past, the Local Chairman indicated in previous conversations to the Chief Engineer, that less damage would occur to the shields if the removal of the shields would be performed by Sheet Metal Workers rather than the Maintenance of Way crews. However, the Chief Engineer has consistently responded that track work cannot be delayed, waiting on switch heater removal. The Organization states that these previous conversations constitute "a strong indicator that mis-assignments with respect to switch heaters have been objected to."

These "previous conversations" do not establish that the Organization has objected to such "mis-assignments." By reason of these conversations, it is implicit that the Maintenance of Way forces have performed the work of removing shields in the past, and that less damage would occur to the shields if the Sheetmetal Workers were assigned to perform the work. These "conversations" also imply that the Sheet Metal Workers were aware that in the past the work in question had been assigned to Maintenance of Way

forces but did not object to the assignment.

Furthermore, the record establishes that Sheet Metal Workers as well as employees from other classes and crafts have performed the work of removing switch heaters and shields as normal and routine duties that are incidental to the work within the particular crafts.

It would be highly impractical and a serious impediment to efficient operations for the Carrier to hold up the work of other employees while waiting for Sheet Metal Workers to arrive at the job site and remove the switch heaters. This is especially true in the instant case inasmuch as Sheet Metal Workers were engaged in previously assigned work.

It should be noted that the Carrier acknowledged that it was the past practice for the Maintenance of Way forces to remove the switch heaters and stack "the material near by." After the track work is completed the Sheet Metal Workers "reinstall the switch heaters."

Viewing the record as a whole, the Board cannot conclude that the disputed work has been performed exclusively by Sheet Metal Workers on this property or systemwide. As stated in Second Division Award 11788: "The Organization's Claim of past practice is not supported by evidence of record. As in similar cases before this Board, the Claim is denied for lack of specific Rule language and proof (Second Division Awards 11246, 11535, 11422)."

The Organization contends that the Carrier failed to answer the Organization's appeal to the highest designated officer in a timely manner as required by Article V of the National Agreement, dated August 21, 1954. However, the alleged time limits violation was not contained in the Organization's claim that was submitted to this Board. The Board has no power to go beyond the issues raised in the original statement of claim. See Third Division Award 28529.

The Organization refers to a letter dated May 25, 1990 from the General Chairman Maintenance of Way Employees, to the Chief Engineer, Terminal Railroad Association of St. Louis, in which he sought monetary relief for two Claimants who were ordered "to perform Sheetmetal Workers work of removing switch heaters at switch #12 at Willows Tower, "on May 1, 1990. It is sufficient to state that this episode occurred more than two months after the incident giving rise to the instant claim. Moreover, the facts and circumstances surrounding the May 1, 1990 episode are not contained in the record. Thus, no weight can be given to the General Chairman's claim.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1993.