

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21758  
Docket Number M-W-21716

George S. Roukis, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(Louisville & Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when, on January 8, 1975, other than Bridge and Building Sub-Department forces were **used to install** hand rails on the **new** foreman's office in the west **end** of Shop #14 at South Louisville **/System** File 1-9 (52)/E-304-9 E-3041.

(2) As a consequence of the aforesaid violation, Carpenter G. R. Madden and Carpenter Helper W. L. **Fugit** shall each be allowed four (4) hours' pay at their respective straight-time rates.

OPINION OF BOARD: The **gravamen** of the case represents a jurisdictional dispute between the Maintenance of Way **Employees** and the Sheet Metal Workers International Association over the proper assignment **of** hand rail installation work in buildings.

Specifically, claimants assert Carrier's assignment of hand rail installation work to Sheet Metal Workers on January 8, 1975 was not only an explicit violation of the unambiguous language of Rule 41(a) of the Maintenance of Way Employees' agreement, but also reflected a work assignment decision that was clearly at variance with Carrier's consistent observance of this rule. Compelling evidence consisting of persuasive Third Division awards, meticulous word-by-word analysis of Rule 41(a) and senior Maintenance of Way Employees' confirmatory statements were methodically presented to underpin claimants' charges.

Conversely, the Sheet Metal Workers Association joined with Carrier, assertively contend that said work was traditionally assigned to its **employees** pursuant to Rule 87 of the Association's agreement, prior formal and informal understandings, **employee** affirmations and past practice. The Sheet Metal Workers submitted an **intervenor's ex parte** petition on November 4, 1976 setting forth therein relevant particulars, precedent awards, and supportive arguments. Additionally, Carrier further argues that claimants' failure to overcome the allegations raised in this petition, by responding **to** the statements and assertions delineated therein, vitiates the merits of their claim.

Recognizing the issue's acute sensitivity, the Board has carefully reviewed the entire record with particular emphasis to a painstaking analysis of **Rules** 41(a) and 87 and their historical applicability. Accordingly, while noting the merits of the parties' respective arguments, the Board concludes that the evidence proffered does not support conclusively that the installation of hand rails in buildings was exclusively the work of either the Maintenance of Way Employees or the Sheet Metal Workers. Either rule, **standing** alone, might provide sufficient clarity to substantiate the Maintenance of Way Employees' position **or** the Sheet Metal Workers' claim to said work, but the lack of any clear or persuasive documentation showing a definitive, long-term history of said assignments to either **employee** organization warrants this conclusion.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and Employees within the meaning of the **Railway** Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was not violated.

A W A R D

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this **14th** day of October 1977.