

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32761
Docket No. MW-31738
98-3-94-3-2**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned pipefitters to repair a water line behind the Welding Plant Lunch Room in Radnor Yard on December 3, 1992 rather than assigning Pump Repairman G. C. Stroud and Assistant Pump Repairman C. W. Gay, Jr. [System File 13(134)(92)/12(93-182) LNR].**
- (2) As a consequence of the violation referred to in Part (1) above, Pump Repairman G. C. Stroud and Assistant Pump Repairman C. W. Gay, Jr. shall each be allowed eight (8) hours' pay at their respective rates of pay and eight (8) hours' pay at their respective overtime rates of pay.”**

FINDINGS:

The Third 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 employee 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 were given due notice of hearing thereon.

As Third Party in Interest, the Sheet Metal Workers' International Association was advised of the pendency of this dispute and chose to file a Submission with the Board.

During December 1992, Carrier's Mechanical Department was performing work on the main water line serving Radnor Yard at Nashville, Tennessee. Specifically, on December 3, 1992, Sheet Metal Workers Hamm and Gibbs made outside repairs to the main water line going into the Welding Plant.

The Organization submitted a claim alleging that Carrier had violated Scope Rule 1, as well as Rules 2, 3(d), 41 and Appendix 5 by allowing the Mechanical Department employees to perform the work. The Organization, on behalf of Claimants, requested payment of eight hours at the Pump Repairman and Assistant Pump Repairman straight time rates, and eight additional hours at the punitive rates for those positions due to the repair work performed on December 3, 1992.

Carrier denied the claim, premised upon the language found in Appendix No. 5 that restricts the Organization from laying claim to "maintenance of all . . . water lines in . . . yards . . . as designated at each point." According to Carrier, Radnor Yard (Yard offices, Shops and Yards) is designated as a location where BMWE will not lay claim to the above described work.

In a February 10, 1993 appeal the General Chairman maintained that Appendix No. 5 only allowed Mechanical forces to perform plumbing work "inside of shops, other than those utilized by Maintenance of Way forces and in the Yard at Radnor." The General Chairman further maintained that all other plumbing work is exclusive to MofW forces, "including the work on the water main in question." The General Chairman included copies of statements, allegedly from several B&B employees, (including Claimant Gay) stating that in the past they had worked on or near the water main in dispute.

In its final declination of the claim, and in connection with the requested remedy, Carrier pointed out that Sheet Metal Worker Gibbs worked only eight hours on December 3, 1992, and did not as the Organization alleged, work an additional eight hours overtime. Further, according to Carrier, the "self-serving" statements which the Organization submitted in support of the claim do not alter the terms of Appendix No. 5 that "supports Carrier's position that the work in question involved maintenance of the main water line in Radnor Yard . . . not inside any MofW building used as a shop."

The Sheet Metal Workers' International Association submitted documentation which stated, in pertinent part:

"The following is the response of the Sheet Metal Workers' International Association to the submission of the Brotherhood of Maintenance of Way Employees as identified above.

It is the position of this Organization that the Brotherhood of Maintenance of Way Employees has no merit under the current controlling agreement or exclusive past practice for their claim as presented to this Board. The Brotherhood of Maintenance of Way Employees at the CSX Transportation facility in Nashville, Tennessee are claiming work that has historically been performed by the Sheet Metal Workers' International Association.

It is apparent from the record that this work has historically been performed by the Sheet Metal Workers. Current controlling agreements and past practice support this fact."

The Sheet Metal Workers relied upon Rule 87 of the Louisville and Nashville Railroad Agreement which states:

"Sheetmetal Workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings, including general office buildings, and on passenger coaches and engines of all kinds; the building, erecting, assembly, 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, connecting and disconnecting of air, water, gas, oil and steam pipes; the operation of babbit fires, oxyacetylene, thermit and electric welding on work generally recognized as sheetmetal workers' work, and all other work generally recognized as sheetmetal workers' work." (Emphasis added)

The telegraphic style Appendix No. 5 may not be grammatically perfect or artfully worded, but its meaning is clear and unambiguous. In plain words, it specifies that maintenance of pipe and plumbing work in buildings at enumerated points (inclusive of Radnor Yard at Nashville, Tennessee) is reserved for performance by Mechanical Department [SMWIA represented] employees. The only exception is that maintenance of pipe and plumbing work in certain specified types of buildings at the enumerated points is carved out and reserved for performance by Maintenance of Way [BMWE represented] employees. It will be noted that Appendix No. 5 is silent regarding such work outside of buildings:

"In conference on February 2, 1944 it was agreed [that] at points enumerated above, pipe and plumbing work in buildings, exception section houses and water treating plants, will be maintained by the Mechanical Department forces. Section houses, water treating plants, buildings used as shops by the Maintenance of Way forces will be maintained by the Maintenance of Way forces."

Given this delineation, for purposes of Appendix No. 5, proper determination of the Organization with jurisdiction over the work of maintenance of pipe and plumbing work in buildings at the enumerated points turns upon what building the pipe and plumbing is located in. In order to prevail under Appendix No. 5, BMWE has the burden of proving that the work performed was on pipe and plumbing in a "section house, water treating plant or building used as [a] shop by the Maintenance of Way forces" at Radnor Yard. That point is not established with requisite certainty on this record. [Claimants assert but do not prove that the water line was inside the Welding Plant Lunch Room. Carrier asserts but does not prove that the plumbing job was a main water line outside in the Yard. SMWIA asserts but does not prove that the work at issue was performed on the main water line to the Hump.]

As the moving Party, BMW E is required to prove every material fact necessary to support its claim. No violation of the express language of Appendix No. 5 is shown on this record. If *arguendo*, the work was performed outside of one of the specified buildings over which Maintenance of Way forces have work jurisdiction, we do not find probative evidence of reservation of the work under BMW E Scope Rule 1, Seniority Rules 4, 5 or 6, Bridge and Building Rule 41 and/or by custom, practice and tradition of past performance to the practical exclusion of others. Based upon all of the foregoing, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of September 1998.