

Award No. 1359

Docket No. 1290

2-C&NW-SM-'50

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 12, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (SHEET METAL WORKERS)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the assignment of signalmen instead of sheet metal workers since about September 25, 1947, to assemble and erect housing units made of 10 or lighter gauge sheet metal is not authorized under the current agreement, and that accordingly the carrier be ordered to assign sheet metal workers to perform the aforesaid work.

EMPLOYES' STATEMENT OF FACTS: On the carrier's Galena Division, which extends from Chicago west to the Mississippi River, a distance of approximately 138 miles, the officers thereof, since about September 25, 1947, have assigned signalmen instead of sheet metal workers to assemble and erect housing units on foundations at various locations on said Division. These housing units are made of 10 or lighter gauge sheet metal. The house base is 8' x 16', and the house height is 7' 7". The house sides consist of 22 sections and the roof thereof consists of 8 sections. Each house is equipped with two metal ventilators and one door.

The carrier, in addition to the employment of signalmen on this Division, likewise regularly employs on said Division both monthly and hourly rated sheet metal workers for the purpose of performing sheet metal workers' work in the maintenance of electrical engineering, telegraph and signal departments, as per the caption at the top of page 53 of the agreement, hereinafter referred to. The carrier officers, however, on more than one occasion, have declined to use sheet metal workers to perform the afore-mentioned work.

The agreement as amended effective January 1, 1925, and as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the foregoing statement of dispute is supported by the provisions of the current collective agreement, firstly, because the work set forth in the above statement of facts is covered in the classification of work provisions of Rule 103, reading:

"Sheet metal workers' work shall consist of tinning, copper-smithing 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

8. Servicing gas switch point heaters at interlocking plants.
9. No employes other than those coming within the scope of this agreement will be required or permitted to perform any of the above work." (Emphasis supplied.)

As indicated above, the class of work coming within the scope of signalmen's schedule agreement includes the construction, repairing, renewing, replacing, reconditioning and maintenance of signals or signal systems (including centralized traffic control systems) **with all appurtenances** on or along the railway tracks, for the regulation of the movement of trains. The fabricated sheet metal instrument housing units erected in connection with the centralized traffic control installation are signal system appurtenances as referred to in the scope rule of signalmen's schedule agreement. These units are erected for the purpose of housing signal instruments and wiring for the centralized traffic control installation. The erection of sheet metal and other type units to house relays, transformers, rectifiers and other signal instruments has been recognized as a part of the work belonging to employes of the signalman class on the C&NW Railway. Such signalmen have, in the past, erected housing of this type at Chicago and elsewhere on the railway in connection with the installation of automatic interlocking plants, remote control plants and other signal system installations. Further, it is the position of the signalmen's organization that the erection of the units for housing signal equipment in connection with the installation of centralized traffic control is definitely signalmen's work.

POSITION OF CARRIER: There is herein involved a dispute between the Sheet Metal Workers International Association and the Brotherhood of Railroad Signalmen of America involving the performance of work, and such being the case it is the position of the carrier that the matter is not properly before the Second Division, National Railroad Adjustment Board, but is one that should be disposed of by agreement between representatives of the two organizations. However, if the Second Division does take jurisdiction of the case, it is the position of the carrier that in consideration of the provisions of the scope rule of the signalmen's schedule agreement and the recognized past practice of using signalmen to perform the work of assembling the parts of the fabricated signal instrument housing units of the type involved and erection of same on the ground there is no justification for the claim that such work be now taken away from signalmen and turned over to employes of the sheet metal worker class and that the Board cannot properly do otherwise than deny the claim.

Further, if the Second Division does take jurisdiction in this case and docket same for further handling, it is the desire of the carrier that an oral hearing be granted.

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.

The parties to said dispute were given due notice of hearing thereon.

We find that the carrier's contention that this is a jurisdictional dispute between two classes or crafts of employes as to which is entitled to perform a certain type of work, of which this Board has no jurisdiction, to be without merit. This is a claim relating to a violation by the carrier of the Scope of its Agreement with the sheet metal workers by the removal of work therefrom. Such is within the jurisdiction of this Division.

That is, if work is claimed by an organization for its members it must have an agreement with reference thereto before this Board has authority to act thereon as this Board is solely an interpreting agency under the law

creating it. If no organization, under its agreement, has the right thereto then it presents a question within the jurisdiction of the National Mediation Board. On the other hand, if the carrier has contracted the work to two or more organizations that fact does not divest this Board of jurisdiction to determine if the agreement before it gives to the members of that group the right to perform it. If this results in the same or separate Divisions of the Board awarding the same work to separate organizations that does not result in loss of jurisdiction, but rather requires the carrier to renegotiate its agreement to remove the trouble.

What may be the rights of the Brotherhood of Railroad Signalmen of America under their agreement effective July 1, 1939, we do not decide as that can only be determined by the Division of this Board having jurisdiction thereof when it is properly presented to it.

Factually the record discloses that the carrier had signalmen assemble and erect fifteen housing units of various sizes. The sizes ranged from a minimum of 8' by 10' to a maximum of 8' by 18'. They were 7'7" high. These units are located along carrier tracks west from Chicago to the Mississippi River on its Galena Division. They were constructed of fabricated sheet metal of 10 gauge or lighter and erected in connection with the installation of a Centralized Traffic Control System. They are used for the purpose of housing signal instruments.

Rule 102 of the Sheet Metal Workers' Special Rules provides, so far as here material, as follows: "A man * * * who is qualified and capable of doing sheet metal work * * * as applied to buildings, * * * whether it be tin, sheet iron, * * *, shall constitute a sheet metal worker."

Rule 103 of the Sheet Metal Workers' Special Rules provides, so far as here material, as follows: "Sheet Metal Workers' work shall consist of * * * the building, erecting, assembling, installing, dismantling and maintaining parts made of * * * galvanized iron of 10 gauge and lighter * * *, and all other work generally recognized as sheet metal workers' work."

The work here performed by signalmen falls within the class of that which the carrier has, by its agreement with the sheet metal workers, placed within the Scope of their Agreement. Having done so it cannot remove it therefrom by unilateral action and to do so, as it has been done, is in violation thereof.

Work embraced within the scope of an agreement cannot be removed therefrom and assigned to employes not subject to its terms.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1950