

Award No. 2372

Docket No. 2284

2-UP-SM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Sheet Metal Workers were improperly used to build and assemble a building of which the siding, gables, and roof consisted of sheet metal prefabricated panels prior to July 1, 1954.

2. That accordingly the Carrier be ordered to compensate Sheet Metal Workers Bernard J. Koehler, George Heimdal, Sam F. McDowall, Jack H. Collins, Nathan N. Orgill, James H. Grady, Joseph E. Rowley and Joseph Luke in the amount of four hundred and thirty two hours (432) to be divided equally among them.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 1, 1954 in the scrap yards of the Union Pacific at Pocatello, Idaho a building was completed by Maintenance of Way carpenters over the protest of sheet metal worker committeeman. The siding, gables and roof were constructed of sheet metal prefabricated panels. The above named claimants were furloughed and available to perform this work if called.

This dispute has been handled with the carrier up to and including, the highest officer so designated by the company, with the result that he has declined to adjust it.

The agreement effective September 1, 1945, as it has been subsequently amended, together with special agreement governing employees covered by System Federation agreement dated March 27, 1935, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimants were deprived of a considerable amount of work and salary due to the action of the carrier in this dispute and that such action is contrary to the provisions of the rules of current agreement when Maintenance of Way carpenters were assigned to work that is spelled out in the sheet metal workers classification of work rules, especially Rule 109 of the federated agreement which reads

"Whatever our own views may be regarding the meaning to be given to 'involved' as that word is used in the context of Section 3, First (j) of the Railway Labor Act, the same must yield to the authoritative impact of previous court decisions adjudicating this identical subject. In a fairly extensive series of cases, the Federal Courts steadfastly have maintained that the giving of notice by the National Railroad Adjustment Board, to interested third parties is not only contemplated by this section of the Act, but is a jurisdictional prerequisite to the exercise of the statutory power conferred on such Agency. See *Hunter vs. Atchison, Topeka and Santa Fe Railway*, 188 F (2d) 294 (CCA); *Brotherhood of Railway Trainmen vs. Templeton*, 181 F (2d) 527; *M-K-T Railroad Co. vs. NRAB* (U. S. D. C., N. D. of Ill. Civil No. 50 C 684) 18 L. C. 65, 814; affirmed (188 F 2d) 302 (CCA). Also to the same effect is *Illinois Central Railroad Company vs. NRAB, Third Division, et al.*, (U. S. D. C., N. D. of Ill. Civil No. 53 C 1245) now pending review by Circuit Court of Appeals.

In the face of such an overwhelming weight of legal precedents, it would be extremely short sighted were we to advocate a policy running counter to the aforesaid explicit pronouncements of the judiciary, thereby jeopardizing the ultimate validity of any award to be later made by this Division on the merits of the instant controversy. Under the prevailing judicial viewpoint the assumption of such risk in this particular submission is neither fitting nor proper." (Emphasis added.)

(2) The claim presented is without merit.

The following discussion of the lack of merit to the claim here prosecuted is not a waiver of our position that the Board is without jurisdiction to consider the merits unless and until notice is given to the affected organization as set forth in the preceding discussion.

Claim is here made that certain work should have been performed by employees represented by the sheet metal workers' organization instead of by other employees. The work involved was the assembling of a completely prefabricated Armco building at Pocatello. In order that the Board have any basis whatsoever on which to sustain the claim presented, it must be given clear and convincing proof that the sheet metal workers have the exclusive right to perform this work on this carrier's property.

No such proof can be offered because the sheet metal workers do not have such exclusive right. This work has been performed by other than sheet metal workers on this property for many, many years.

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.

This is a claim by eight Sheet Metal Workers who allege they were deprived of work when employes other than sheet metal workers were used to build and assemble a building at Pocatello, Idaho. The buildings were constructed of metal, completely prefabricated, and known as an Armco structure. All of the superstructure, supports, doors and window frames and the side and roof panels were all prefabricated. Claimants contend that this work of assembling and fitting the prefabricated parts into the finished build-

ing is work belonging to sheet metal workers under Rule 109, Sheet Metal Workers classification of work rule which provides in part:

"Sheet Metal worker's work shall consist of tinning, copper-smithing and pipefitting in shops, yards, buildings or 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, blocks, planished, pickled and galvanized iron of 10 gauge and lighter, including brazing, soldering, tinning, leading, and babbitting in connection with sheet metal workers' work, * * *."

Under the foregoing rule, the work in question belongs to the sheet metal workers. The words "the building, erecting, assembling, installing" parts made, covers the erecting and installing of buildings such as were built at Pocatello. The contention of the Carrier that such a building is within the rule only when "brazing, soldering, tinning, leading and babbitting" is required is not tenable. The latter words expand the rule instead of restricting it. The fore part of the rule implies the inclusion of work within a broader scope than that described as "including brazing, soldering, tinning, leading, and babbitting in connection with sheet metal workers' work." The contention that fabrication is necessary to make the work that of sheet metal workers is not borne out by the rule.

It is urged that employes other than sheet metal workers have performed this work for many years. Under the situation here existing, a practice cannot overcome the definite and unambiguous provisions of the rule. There is no retention of practice in the sheet metal workers' classification of work rule on this property such as we find in the Carmens' classification of work rule in Award 2363 (Docket 2142). We must hold, therefore, that the work in dispute belonged to the sheet metal workers under the plain meaning of Rule 109.

We are again urged to hold that a third party notice is a condition precedent to a valid award. Our views are to the contrary as expressed in Award 2285.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1956.