

Award No. 2487
Docket No. 2324
2-NYC&StL-SMW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carl R. Schedler when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 57, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Sheet Metal Workers)**

**THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, other than employes of the Sheet Metal Workers' Craft, were improperly assigned to perform pipe work between the east bound main track and team track at Rocky River, Ohio.

2. That accordingly the Carrier be ordered to compensate the following employes of the Sheet Metal Workers' Craft at the applicable over-time rate of pay for the days carpenters were used on the project:

Mr. Raymond Bisbee, Jr.	Mr. Lewis J. Mondy
Mr. Richard G. Scheweikert	Mr. Joseph F. White
Mr. Charles G. Bisbee	Mr. James M. Breeden
Mr. J. A. Ross	

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the New York, Chicago and St. Louis Railroad Company, herein-after referred to as the carrier, and those classes of employes of the Maintenance of Way Department, which includes the sheet metal workers, represented by System Federation No. 57, which contracts the work herein dispute to the sheet metal workers.

On or about November 15, 1954 the carrier assigned L. F. Rosings, carpenter's gang, to install several hundred feet of 8" Armco perforated pipe, replacing the old broken down 8" V.C. pipe. The pipe line in dispute is used to drain surface water off between the east bound main track and team track at Rocky River, Ohio. The pipe line here in dispute connects in to catch basins or cleanouts and other pipe lines which connect into city sewer lines at Linda Avenue, Rocky River, Ohio. This work was completed on December 31, 1954.

Sheet metal workers were assigned to assist the carpenter gang in the installation of this pipe on November 22, 23 and 24, 1954.

As previously shown in this submission, the carrier has in good faith developed the facts and attempted to handle the dispute on the property on the merits, advancing facts and arguments to support its position. The employes have contented themselves with citation of Rules 38 and 39 and have simply continuously reiterated that the performance of the work by B&B forces was a violation of those rules, without any reference to basic facts or discussion of those rules.

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.

Rule 38 provides:

"Sheet metal workers' work in the Maintenance of Way Department shall consist of tinning, plumbing, gas, steam and pipe fitting, repairing and installing wrought and cast iron water lines, lamp repairing and other work generally recognized as that of tinner, pipe fitter, water service mechanic or maintainer."

During the year 1954, it was discovered that about 540 feet of 8-inch vitrified clay pipe drain had broken and needed replacing at the Rocky River, Ohio station on the Cleveland Division of the carrier. The clay pipe was removed and replaced with 8-inch perforated corrugated metal pipe in 20-foot lengths. The work was started in November, 1954 and finished in December, 1954 and was performed by a B&B gang and required a total of 1646 man-hours. The sheet metal workers claim that the work was covered under Rule 37 and should have been performed by members of that craft. On November 22, 23 and 24, 1954 management did assign sheet metal workers to assist in the installation of the pipe.

According to the record in this case, the work of replacing the clay pipe consisted of excavating to remove the old pipe, laying the new pipe in the bottom of the trench which had to be fitted together with connecting bands, and fitting the pipe into catch basins or clean outs, and then back-fill the ditch to the level of the ground. Since it was necessary to fit the pipe, and since it was pipe of the kind and size usually handled by pipefitters, we find that the work involved herein is covered by the language of Rule 38. The proper penalty rate for deprivation of work is the pro rata rate. The request for over-time rate of pay will be denied.

AWARD

Claim of employes sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June, 1957.

**DISSENT OF CARRIER MEMBERS TO AWARD NO. 2487—
DOCKET NO. 2324—NYC&StL—SMW**

Notwithstanding the undisputed record which shows Maintenance of Way employes in the past, in most instances have installed drain pipes of the kind and size involved in the instant claim, the majority have erroneously concluded:

“Since it was necessary to fit the pipe, and since it was pipe of the kind and size usually handled by pipefitters, we find that the work involved herein is covered by the language of Rule 38”.

First: What fitting was necessary? The drain pipe lengths were laid end to end and the purpose of the 12" bands is merely to hold the pipes in alignment. Fitting as referred to in Rule 38 has always been construed to mean the cutting to length and threading for the purpose of making a tight joint. Fitting in that sense does not apply to drain pipes, as a tight joint is wholly unnecessary.

Second: Contrary to the conclusion of the majority that “it was pipe of the kind and size usually handled by pipefitters”, the record is replete with statements by the Carrier that such is not the case. No such contention was even advanced by the petitioners and it is solely an unjustified conclusion and assumption by the majority. In fact the petitioners admit others than Sheet Metal Workers have in the past performed this type of work, stating on Page 3 of their Rebuttal Statement:

“A violation mutually adopted by the parties, has the effect only of stopping claims prior to the date that one of the parties insist upon compliance with the agreement.”

Third: The “* * * repairing and installing wrought and cast iron water lines, * * *”, referred to in Rule 38 applies only to water pipes used to carry water under pressure. It is the practice to assign Pipefitters to perform pipe work involving pressure lines used for handling air, oil, water, gas, etc. Non-pressure drainage lines are maintained and installed generally by Maintenance of Way forces (either trackmen, B&B men or laborers.)

Nothing whatsoever in the record, either by rule or practice, justified a sustaining award even in part.

The petitioners have reached out and included names of claimants who have no seniority of any kind as mechanics and who have absolutely no contractual right to perform mechanics' work by any rule of the agreement. The majority accepts that claim and thus awards those claimants penalty payments for work that they have no contractual right to perform. Claims are only valid where the rules of the controlling agreement have been violated, and where the claimants have exclusive rights to the performance of the work. Those claimants, having no seniority rights as mechanics, have no valid claim. It is apparent this is a deliberate attempt to extend the distribution of a penalty improperly imposed on the Carrier. None of the claimants lost any time as a result of the Carrier's action, as they were on duty and under pay when the disputed work was performed. Only by disregarding the facts and Rules 38 and 39 of the agreement could the majority conclude that helpers holding no seniority rights as mechanics should be awarded mechanics' rates for excavating and backfilling.

The purpose of the Railway Labor Act is to settle disputes, not create them. Nothing but a chaotic condition can result in the industry by the issuance of such an unsound, fallacious award, as involved in this case. The Carrier has no alternative other than to disregard this award as to its future conduct. To do otherwise would nullify those provisions in the agreement providing for the employment of helpers and/or laborers and would

assign work to water service mechanics never heretofore performed by that class and which is not assignable to them by any rule of the agreement.

In view of the fact that Maintenance of Way Department employes have normally performed this work in the past, the Carrier had dwelt at length in the record on the necessity of issuing notice of the pendency of the claim to Maintenance of Way employes. The majority in this case have completely ignored that pleading, no mention whatsoever being made in the award.

For the above reasoning we, the undersigned, consider the award grossly in error and therefore file this dissent.

D. H. Hicks
E. H. Fitcher
J. A. Anderson
R. P. Johnson
M. E. Somerlott