

Award No. 2883

Docket No. 2771

2-WP-SM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 117, RAILWAY EMPLOYEES'
DEPARTMENT, AFL (Sheet Metal Workers)**

WESTERN PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the carrier improperly contracted out the work of remodeling the office building located in the yards of the Sacramento General Shops consisting of working on metal of 10 gauge or lighter and pipe work to N. H. Sjoberg & Son, Oakland, California during the period April 27, 1956 through December 1, 1956.

2. That accordingly the carrier be ordered to compensate Sheet Metal Workers on the seniority roster, equally divided amongst them the number of man hours such work was performed by the Contractor at the applicable overtime rate of pay.

EMPLOYEES' STATEMENT OF FACTS: On or about April 27, 1956, work started on the remodeling of the office building of the Western Pacific Railroad Company located in the yards of the Sacramento General Shops at Sacramento, California. The work in general calls for the building, erecting, assembling, installing and dismantling of parts contained therein. Some of the above mentioned work was performed by employees not subject to the current agreement, while on the other hand, a portion of the work has been performed by employees properly covered by agreement provisions of February 1, 1946.

On or about April 27, 1956, the sheet metal workers' local committee of the Sacramento General Shops on the Western Pacific Railroad, seeing employees not covered by the agreement provisions of the agreement of February 1, 1946, between The Western Pacific Railroad Company and System Federation No. 117 performing work that had previously been performed by the sheet metal workers made formal protest to their local management.

The remodeling work in question consisted of general tin work of metal of 10 gauge or lighter such as air ducts; pipefitting such as bending, fitting,

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 employees 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 waived right of appearance at hearing thereon.

From this docket the facts appear to be that an out-dated building was rehabilitated. The walls and roof were left standing. \$71,611.00 was the contract price of the work which was done by an outside contractor, under a building permit. The contractor used his own employees who were members of the building trades union.

The Organization here demands compensation for the number of man hours of work performed by the contractor's forces on the sheet metal work, including heating, air conditioning, pipe work and drains.

If this were all new construction there would be no claim. If it was maintenance of an existing installation, a valid claim would lie if an outsider moved in and took work away from employees who had the skill and the contractual right to do the work. We are of the opinion that the work done was much more than maintenance and was more nearly new construction wherein some parts of the structure were salvaged and used in the new building.

The carrier in its original submission, Exhibit "A", introduced a great amount of evidence proving that it has been practice on this property for many years to contract out major building projects, some of which are stated to be similar to the present case. As a part of its defense the carrier urges that some of the work claimed by the Sheet Metal Workers was beyond their skill and experience.

We also find that the claim as presented does not identify specifically the work claimed, the persons claiming, nor the amount of the work in either hours or dollars.

Based on the entire record, we are of the opinion that the claim is without merit.

AWARD

Claim of employees denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of June, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2883

There is no exception in the applicable rules of the controlling agreement to justify the majority's conclusion that the instant work did not belong to sheet metal workers to the exclusion of all others. Since the agreement contains no exception the findings and award of the majority are improper.

For the foregoing reasons we are constrained to dissent from the findings and award of the majority.

/s/ R. W. Blake

/s/ C. E. Goodlin

/s/ T. E. Losey

/s/ E. W. Wiesner

/s/ James B. Zink