

Award No. 3278

Docket No. 2866

2-B&O-SM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Sheet Metal Workers)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1—That the Carrier improperly assigned other than Sheet Metal Workers to perform Sheet Metal Workers' work in connection with renewing and installing sheet metal on dust collecting system at Locust Point Grain Elevator beginning April 16, 1956.

2—That, accordingly, the Carrier be ordered to compensate Sheet Metal Workers Alvin W. Beebe, Edward H. Grace, Sheet Metal Worker Helpers William A. Dear and Don Heiderman for eight (8) hours at the pro rata rate of pay for April 16, 1956, and all other subsequent days on which other than Sheet Metal Workers performed the aforesaid work.

EMPLOYES' STATEMENT OF FACTS: Sheet Metal Workers A. W. Beebe and E. H. Grace and Sheet Metal Worker Helpers W. A. Dear and Don Heiderman, hereinafter referred to as the clamants, are employed by The Baltimore and Ohio Railroad Company, hereinafter referred to as the carrier, in the water station forces.

The carrier awarded a contract to The Fingles Company, also known as The Sheet Metal Fabricators, Inc., to fabricate, renew, repair and replace the dust collecting system at Locust Point Grain Elevator, Baltimore, Maryland. Approximately twenty-two (22) gauge sheet metal was used by the contractor in the performance of his work.

On April 16, 1956, four (4) employes of The Fingles Company began work on the renovation of the dust collecting system, and they worked each day - Monday through Friday, inclusive, from 12:00 Midnight to 6:00 A.M. - until the work was completed.

prints covering the redesigning. The contractor specialized in work of this kind and it was deemed urgent to have the dust collecting system properly functioning in the shortest possible time to comply with the directive of the Air Pollution Division.

Thus this project demanded hasty completion. The contract was entered into on March 29, 1956. The work was started shortly thereafter as of April 5, 1956. The contractor was fully occupied during the period of the renewals. In the contract of March 29, 1956, time was of the essence.

Paragraph 2 of the contract reads in part that "The date of starting the work shall be fixed in a written notice from the Engineer to the Contractor, which notice shall be mailed to or served upon the Contractor not less than ten (10) days before the starting date fixed therein. The contractor agrees to commence the work on or before the starting date fixed in said notice and to complete the work as herein described within the shortest possible time thereafter, this provision being of the essence of this agreement.***."

The carrier had but one alternative in this case and that alternative was to contract out the work. The Air Pollution Division was pressing the carrier to remedy the situation at the grain elevator immediately. The project on the ducts demanded special skills for construction and installation. The carrier's own forces had neither the skill nor the experience to handle this large project. Had they possessed the skill and experience, and they did not, they could not have handled the project within the time necessary to complete it.

The circumstances in this case plainly take this wage claim outside the scope of the shop crafts' agreement.

This claim is not valid and ought to be denied.

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.

Parties to said dispute were given due notice of hearing thereon.

The extensive dust collecting system at Locust Point Grain Elevator, Baltimore, Maryland, in use since 1924 had become so obsolete and dangerous to the surrounding community, that in 1956 it was necessary to redesign and modernize it. Because of the nature and extent of the modernization project and the accompanying need for designing, renewing and extending the system, it was determined that the carrier's normal working force was not qualified to handle the operation, and it was therefore contracted with Sheet Metal Fabricators, Inc., of Baltimore, a company which specialized in designing and installing systems of this kind.

It appears that claimant concedes the propriety of carrier's contracting out this work insofar as the modification, change and redesign of the dust collecting system is concerned, but it questions the portion of the work done by the outside contractor, which consisted of renewal and replacement of dust pipes and elbows in the grain elevator.

We have carefully reviewed this complex and confusing docket, and are of the opinion that although replacement of a portion of the dust conveying ducts in the elevator would normally be work belonging to sheet metal workers, we have, nevertheless, concluded under the facts and circumstances shown, that these ducts were such an integral part of the entire modernization program we are unable to say they could reasonably be segregated from the whole.

We have, therefore, determined that a sustaining award is not indicated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3278.

The work involved in this docket is sheet metal workers' work pursuant to the current agreement in effect between the parties. The Scope Rule reads as follows:

"Scope of Agreement.

The following rules and working conditions will apply to:

Machinists
Boilermakers
Blacksmiths
Sheet Metal Workers
Electrical Workers
Carmen

Their apprentices and helpers (including coach cleaners),
in the

Maintenance of Equipment
Maintenance of Way
Signal Maintenance
Telephone and Telegraph Maintenance
Bolt and Forge Shop, Cumberland, Md., and

all other departments, performing the work specified herein, superseding all other rules and agreements."

Therefore, as the Scope Rule covers the department in which this work was done the award is erroneous.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink