

Award No. 3604

Docket No. 3459

2-SAL-SMW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Wilmer Watrous, when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Sheet Metal Workers)**

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the agreement the Carrier improperly assigned other than Sheet Metal Workers, on February 24, 1958, to repair discharge air pipe line in the Retarder Yards, Hamlet, N. C., in violation of Rule 98 Shop Craft Agreement.

2. That the Carrier be ordered to compensate Sheet Metal Worker G. O. Folger and Sheet Metal Worker Helper E. W. Brown in the amount of four (4) hours each, for this work which they were entitled to perform under the applicable rules of the current agreement.

EMPLOYEES STATEMENT OF FACT: The carrier maintains a roundhouse and employs a number of mechanics at Hamlet, N. C. One sheet metal worker and helper are regularly assigned to maintenance work, and has for years done work of our classification within the yard limits of Hamlet. In 1954 a retarder yard was installed at Hamlet, the entire project was contracted out to general contractor. Since the installation the sheet metal workers have maintained the stand-by equipment, such as the diesel engine and air equipment on regular inspections, also the inspection of heating equipment and air condition equipment making repairs when necessary. Due to the newness of the equipment there has been very little work except the regular inspections. The retarder yard is located some little distance from the roundhouse, and it is customary that the assistant supervisor of telephone and signals call the roundhouse foreman for a man when there is work to be done. On February 24, when regular maintenance man returned to work after being off his rest days, he was instructed to go to the retarder yard and make necessary repair to air pipe line, when checking on the job he found that the work had already been performed. Upon inquiry

the signalmen on that carrier did not contain the specific provision "car retarder systems". Now, on the Seaboard the agreement with signalmen specifically covers and includes "car retarder systems". Moreover, Second Division Award 2810, covering claim of sheet metal workers on the B&O Railroad (the same carrier involved in Award 1835) that signalmen were improperly assigned to install air pipe lines for use in operation of a newly installed interlocking system in the yard at Butler Junction, endorsed Second Division Award 1835 as well as Third Division Award 6203, and held:

"Here, however, we are confronted with another question. The work with which we are here concerned involves the initial installation of an integral operational component of an interlocking system. An interlocking system has to do with the actual physical operation of trains. The carrier asserts that since the inception of interlocking systems the initial installation of such systems has never been vested, either in whole or in part, on an optional basis, or otherwise, in the sheet metal workers.

The record contains no evidence that would tend to refute such alleged practice on this carrier. Neither is it asserted, or evidence presented that sheet metal workers perform this type of work in the industry generally.

The burden of proof is upon the party making the allegation. The organization has failed to meet this requirement. So, therefore, there exists no justification for a sustaining award."

That award squarely fits the instant claim. There can be no question that the work referred to in the instant claim belongs to signalmen and how the organization could contend otherwise and submit to the Board a claim so lacking in any merit as the instant claim, is beyond our comprehension. As held in Third Division Award 3523: "The claimant in coming before this Board assumes the burden of presenting some consistent theory which, when supported by the facts, will entitle him to prevail." Also, Third Division Award 5578 pointed out that among the fundamental purposes sought to be achieved by the establishment of the National Railroad Adjustment Board were uniformity of interpretation of the rules, stabilization of relationships between the carriers and the employe organizations and diminishment of causes for disputes between them. Following the principle set out therein; for the Second Division to overrule the prior Board decisions, which uniformly held that the work of installing, maintaining, repairing car retarder systems belonged to signalmen, would be subversive of those fundamental purposes.

FINDINGS: The Second Division of the Adjustment Board, based 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1960.

LABOR MEMBERS DISSENT TO AWARD NO. 3604

The Agreement Preamble includes Sheet Metal Workers.

"It is understood that this Agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment, Maintenance of Way, Signal Maintenance, Telegraph Maintenance and all other Departments of this Company wherein work covered by this Agreement is performed."

The current Agreement Special Rule No. 98 includes this work.

Rule No. 143, captioned, Scope of General and Special Rules, reads:

"Except as provided for under Special Rules of each craft, the General Rules shall govern in all cases."

Therefore since the instant work was not performed by employees subject to said Agreement, the award is in error.

E. W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink