

**Award No. 3759**

**Docket No. 3500**

**2-SOU-SM-'61**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'  
DEPARTMENT A. F. of L.-C. I. O. (Sheet Metal Workers)**

**SOUTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** 1. That the Carrier has violated the terms of the current agreement by contracting out the constructing of an air pipe line in Spencer Shop Yards and Spencer Train Yards, Spencer, North Carolina, to persons other than Sheet Metal Workers that are covered by the current agreement.

2. That the following Sheet Metal Workers be compensated for eight (8) hours for each date listed below, at \$2.476 rate of pay per hour:

V. K. Agner, December 9, 10, 11, 12, 13, 30, 31, 1957 — January 1, 2, and 3, 1958, for a total of 80 hours.

H. L. Corriher, December 9, 10, 11, 12, 13, 30, 31, 1957, January 1, 2, and 3, 1958, for a total of 80 hours.

J. W. Rivers, December 9, 10, 11, 12, 13, 30, 31, 1957, January 1, 2, and 3, 1958, for a total of 80 hours.

J. G. Miller, December 9, 10, 11, 12, 13, 30, 31, 1957, January 1, 2, and 3, 1958, for a total of 80 hours.

C. H. Miller, December 9, 10, 11, 12, 13, 30, 31, 1957, January 1, 2, and 3, 1958, for a total of 80 hours.

B. H. Lomax, December 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, 1957, for a total of 80 hours.

E. W. Gamble, December 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, 1957, for a total of 80 hours.

W. C. Nichols, December 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, 1957, for a total of 80 hours.

James P. Eagle, December 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, 1957, for a total of 80 hours.

J. O. Walker, December 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27, 1957, for a total of 80 hours.

A. H. Shuping, January 6, 7, 8, 9 and 10, 1958, for a total of 40 hours.

F. A. Goodman, January 6, 7, 8, 9 and 10, 1958, for a total of 40 hours

for having been deprived of their contractual right to work on the air line.

**EMPLOYES' STATEMENT OF FACTS:** Sheet Metal Workers V. K. Agner, H. L. Corriher, J. W. Rivers, J. G. Miller, C. H. Miller, B. L. Lomax, E. W. Gamble, W. C. Nichols, James J. Eagle, J. O. Walker, A. H. Shuping, and F. A. Goodman, hereinafter referred to as the claimants, are employes of the Southern Railway Company, hereinafter referred to as the carrier, at Spencer, North Carolina. Claimants were furloughed and held an employment relationship with the carrier in Spencer, North Carolina, retaining their rights on the sheet metal workers' seniority roster in the Spencer Shops territory, were eligible for call back to work under Rule 26 of the controlling agreement, the pertinent part of which reads:

"In the restoration of forces, senior laid off men will be given preference of re-employment, if available within a reasonable time, and shall be returned to their former positions."

The carrier contracted to the A. Z. Price and Associates, Charlotte, North Carolina, hereinafter referred to as the contractor, the construction of an air pipe line in Spencer, North Carolina, Shop and Train Yards. On or about December 9, 1957, the employes of the contractor began construction for the carrier, an air line in the Spencer Shop Yards and Train Yards, beginning at the Spencer Shops Power Plant, with a 4 inch air pipe line and extending 350 feet (approximately 300 feet under ground) to reservoir located east of the carmen's washroom, then extending approximately 160 feet under ground from the reservoir to a point in the train yards; from this point the air pipe line was extended both north and south in yards using over 6,000 feet of 4 inch pipe and over 2,000 feet of 2½ inch pipe connecting into two (2) other reservoirs. Total amount of pipe used was approximately 9,000 feet, having over 50 outlets, using over 50—2 inch air hoses, 36 feet in length, over 50—2 inch valves, over 100 hose adaptors and many other valves, regulators, fittings, flanged, welded and screw type. Construction of the line was completed on or about January 10, 1958.

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

The agreement effective March 1, 1926, as it has been subsequently amended, is controlling.

**POSITION OF EMPLOYES:** With respect to the Carrier's allegation that it is privileged to contract out work of the character involved in this dispute, carrier is relying upon the memorandum of understanding dated November 2, 1943, paragraph (4) page 109 of the shop crafts' agreement, as the basis of their contention.

Carrier is disregarding or overlooking the facts that in this same paragraph (4) of the memorandum they recognized that there was an understand-

The contractor's forces made the installation from blueprints and detailed specifications. It is doubtful claimants have the familiarity with engineering conventions to have rendered a similar service.

The record is clear that the claim which the Sheet Metal Workers' International Association here attempts to assert involves but a portion of the major construction contracted. Prior Board awards have held that work contracted has to be considered as a whole and may not be subdivided for the purpose of determining whether some parts of it could have been performed by railway forces. (Awards 3206, 4776, 4954, 5304, 5563, 6112, and others).

Under the principles of prior Board awards, the monetary claim and demand which the Sheet Metal Workers' International Association here attempts to assert cannot be sustained.

### CONCLUSION

Carrier has shown that:

(a) The effective agreement was not violated as alleged and does not support the monetary claim and demand here made.

(b) The principles of prior Board awards fully support carrier's action.

(c) Claim being without any basis and unsupported by the agreement, the Board has no alternative but to make a denial award.

**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.

Paragraph (4) of the Memorandum of Understanding dated November 2, 1943, appearing on page 109 of the agreement provides in part:

"Nothing in this memorandum alters or amends present understandings as to wrought iron pipe work in shop yards, nor shall prevent continuing the past practice as to contracting certain jobs in new construction or renewal."

This provision recognizes past practice in new construction or renewal involving wrought iron pipe work. As further proof the Carrier cited five instances prior to November 2, 1943, and 126 after that date involving water, sewer, steam, oil and air pipe lines and avers that many more could be cited both before and after that date. It also included in its submission the affidavit of one of its assistant architects stating one hundred eleven instances in which he personally supervised the installation of plumbing, heating and pipe lines performed by contractors on Carrier's eastern lines during the period from October 7, 1948 to September 6, 1953; and the affidavits of eighteen other members of its engineering department, each naming from one to eighteen

such instances between 1929 and 1958, in each case stating the date and the contractor's name. Many of them were only of plumbing, heating or water service lines, most of them based on personal knowledge naturally were more recent than 1942, and the compressed air lines were installed principally in 1957 and 1958; but they all involved the installation of iron pipe work on contract.

The record indicates that this was an entirely new air line system replacing much less extensive lines installed from time to time, apparently by sheet metal workers. Like numerous such air line systems installed in 1957 and 1958 by contractors it involved much more than pipe work, requiring excavation for foundations and pipelines, backfill, construction of forms and concrete work. Under the agreed Memorandum of Understanding and this record of practice the performance under contract of the iron pipe work of this project is not shown to be a violation of the Agreement.

#### AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1961.

#### LABOR MEMBERS DISSENT TO AWARDS NOS. 3759, 3760, 3761.

The work involved in these dockets is sheet metal workers' work in accordance with the terms of the current agreement in effect between the parties. The Scope of the Agreement covers employes of the sheet metal workers' craft in the following departments:

Maintenance of Way (Bridge and Building, where separate from  
Maintenance of Way Department)

Maintenance of Equipment

Maintenance of Signals (Signal and Electrical Department)

The majority admit in the award that the work in question was performed in the shop yards, therefore it was covered by the Scope of the effective agreement between the parties.

Th majority, on the Memorandum found on pages 108 and 109 — the pertinent parts of this Memorandum are here quoted —

“ \* \* \* (4) Nothing in this memorandum shall or shall be deemed to alter past practices as to performance of work of the M. of W. Department heretofore performed by M. of W. employes.

Nothing in this memorandum alters or amends present understandings as to wrought iron pipe work in shop yards, nor shall prevent continuing the past practice as to contracting certain jobs in new construction or renewal. \* \* \*.”

The majority choose to ignore the evidence of record which is a part of the employes' submission, that the past practice in effect at the time the Memorandum was negotiated, "was that sheet metal workers did this type of work," and the Memorandum did not in any way change said practice.

This Division has stated in previous awards "Work embraced within the Scope of an agreement cannot be removed therefrom and assigned to employes not subject to its terms." (See Award No. 1359).

Therefore Awards Nos. 3759, 3760 and 3761 are erroneous.

**Edward W. Wiesner**

**R. W. Blake**

**Charles E. Goodlin**

**T. E. Losey**

**James B. Zink**