

Award No. 3761

Docket No. 3556

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.

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

2. That Sheet Metal Workers C. A. Wylie and Lewis C. Baker, Columbia, South Carolina, be compensated three hundred four (304) hours each at their regular time rate of pay and with additional differential rate for having been deprived by Carrier of their right to work on air line.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Workers C. A. Wylie and Lewis C. Baker, hereinafter referred to as the claimants, are employees of the Southern Railway Company, hereinafter referred to as the carrier, at Columbia, South Carolina. Claimants were furloughed and held an employment relationship with the carrier, in Columbia, South Carolina, retaining their rights on the sheet metal workers seniority roster in the Columbia (Andrews) Shops territory, which included shop and train yards, at the time this claim was instituted and were eligible for call back to work under Rule 26 of the controlling agreement, the pertinent part of which reads:

"Rule 26. Reduction of Expenses:

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 Walker Plumbing and Heating Company, Columbia, South Carolina, hereinafter referred to as the contractor, the construction of an air pipe line in the Andrews Shop and Train Yards, Columbia, South Carolina. On or about January 8, 1958, the contractor's employees began the construction for the carrier an air pipe line in the Andrews Shop and Train Yards, beginning at the old boiler room in the shop yards, then extending into the train yards where the line was then extended in opposite directions through

project — a job requiring special skills, special tools and special equipment. Moreover, it involved more than the performance of pipe work. It involved excavation for the pipe lines, backfilling, excavation for the concrete foundations for the two air reservoirs, building forms for the foundations and mixing and pouring of concrete, setting of the air reservoirs on the foundations, application of the Alkyd zinc chromate primer and two coats of black asphaltum paint to the piping laid underground, etc.

The contractor utilized mobile gasoline powered generators for electric welding, power driven pipe cutters and power driven pipe threaders, and furnished alignment vises for welding pipe as well as other specialized tools and equipment not owned or in possession of the railway company.

The contractor's forces made the complete installation from prints and detailed specifications. It is doubtful that claimants had the familiarity with engineering conventions to have rendered a similar service. Moreover, they were, when employed, maintenance employees and did not by any stretch of the imagination constitute a construction force.

Furthermore, 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 job contracted. Prior awards of the Board have held that work contracted out 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. Third Division Awards 3206, 4776, 4954, 5304, 5563, 6112, and others, so held.

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. Monopolistic rights have not been conferred upon sheet metal workers by the agreement in evidence.

(b) The effective agreement and principles of prior Board awards fully support carrier's action in contracting the here complained of work.

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.

This claim is identical in facts and Rules with that involved in Award No. 3759, and must be denied for the same reason.

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.

The 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.

E. W. Wiesner

R. W. Blake

C. E. Goodlin

T. E. Losey

J. B. Zink