

Award No. 3774

Docket No. 3653

2-B&M-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Doyle when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Sheet Metal Workers)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: 1. The Carrier violated the effective Agreement by assigning outside parties to the performance of the work of making changes and adjustments in the pipe fittings and connections on the Rail-Tel Gas Switch Heaters in the Boston Yard Area on September 8, 11 and 15, 1958.

2. The Carrier shall now compensate Sheet Metal Workers D. H. Smith, F. J. Witts, John Caughey, Edwin Galley and Paul Davis, eight (8) hours each at their respective punitive rates of pay on account of this violation of Agreement referred to in Part 1 of this Claim.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains throughout its Boston Area, Terminal Division, at certain of its important tower and crossover points, remote controlled switches which are equipped with Rail-Tel Gas Switch Heaters. The purpose of these switch heaters is to heat the rail at the switch points in order to melt snow and ice during the winter season. Thus, the switches are kept free from clogging ice and snow and operative during adverse weather. These gas burning units are turned on and lighted during and immediately following the winter storms.

The employees submit herewith

1. Employees' Exhibit A — a Thermofax picture of a switch layout with heaters attached. The gas connection to the heater is marked with a red "X".
2. Employees' Exhibit B — a picture of a Rail-Tel Switch Heater installation.

At the point marked in red "X" in employees' Exhibit A a length of Neoprene hose carrying the gas supply to the heater unit is attached to a spud—a gas inlet orifice, which spud is in turn screwed into the inspirator, thus regulating the pressure of the gas supply to the burner.

Boston Gas Company officials advised the respondent, after petitioner made claim on the property, that any change in character of gas necessitating adjustment of equipment, such as in the instant case, has universally been made by employees of Boston Gas Company for all customers, and not by employees of such customers.

This is not a case in which respondent elected to have outsiders perform work in order to avoid the use of claimants. As stated, the work was performed by direction of the supplier (Boston Gas Company) as a condition of continued service. And it is unquestionably the case that the work was performed at the instance of, and for the benefit of, the Gas Company. Therefore, the railroad had no alternative but to admit and allow the Gas Company employees to do the work.

The work was not installation or maintenance, but was a change-over in the character of gas supplied in this part of the country, necessitating equipment adjustment. Assuming without conceding that sheet metal workers have jurisdiction of installation and maintenance, no such claim can logically be made for work performed at the instance of and paid for by a third party.

From the foregoing it is apparent that there has been no misapplication of the rules in effect. The claim is without merit and should 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 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.

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

Was Rule 88 of the basic agreement violated when on September 8, 11, and 15, 1958 outside pipefitters changed fittings in Switch Heaters which are maintained by the carrier in the Boston Yard?

Carrier contends that the changeover was made by the Gas Company at the instance of the Utilities Commission. That since it was neither ordered nor paid for by it, no liability for wages to its employees can arise. It is said that this did not constitute installation or maintenance but was a service change-over incident to the furnishing of natural gas.

Assuming that ordinarily the installation of orifices such as those shown to have been installed here would fall within Rule 88 of the controlling agreement and would be work belonging to the Sheet Metal Workers, nevertheless the instant changeover was not an ordinary one. It resulted from a change in the heating content of the gas supplied by the Boston Gas Company. Due to this fact the work was performed by the Gas Company for all of its customers without cost. Thus the Carrier did not voluntarily assign work to others. It had not entered into a consensual arrangement for the performance of work. Instead the Carrier in common with other gas users was the recipient of a service which the Utility was obligated to furnish.

Based on the foregoing distinction we conclude that the work in question was not within the scope of Rule 88. That rule as we view it contemplates

work which the carrier controls and not work which is outside its area of control.

Second Division Awards 2564, 3276, 3133, 2912, 2823, and 2803 although not directly in point are persuasive. In those cases claims were denied where it appeared that the equipment was repaired pursuant to contracts providing for service of equipment as a part of a lease or sales arrangement. Thus the instant conduct is more clearly beyond the scope of the basic agreement than was the conduct in the cited awards.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June 1961.