**Award No. 4790**
**Docket No. 4697**
**2-SP(PL)-SM-'65**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.**

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## PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current collective agreement it was improper for the Carrier to contract with Davidson Brothers, 2756 Scott Blvd., Santa Clara, California the removing, repairing and replacing of one ⅜ x 72-inch copper tubing and one ¼ x 72-inch copper tubing used in connection with refrigerant system to coco-cola machine on Automat Car No. 10604 on April 10, 1963.

2. That accordingly the Carrier be ordered to:

   (a) Cease and desist from using other than Sheet Metal Workers to perform this work.

   (b) Additionally compensate Sheet Metal Worker Phillip Spagnuolo in the amount of four (4) hours at his established rate.

EMPLOYES' STATEMENT OF FACTS: On April 10, 1963, the refrigerator system on a coco cola vending machine installed in an automat car No. 10604 became inoperative and it was determined the flanges on the copper tubing were cracked thus making it necessary to remove the copper tubing to effect proper repairs. It is the position of this organization that the repairs to the copper tubing was also within the scope of the sheet metal workers' contract with the carrier. However, Local Chairman G. A. Blixt inadvertently overlooked including these repairs in the original claim. Therefore, repairs to the copper tubing which were made at the time the copper tubing was removed are not a part of this claim for the reason it was not included in the original claim. However, this does not mean the sheet metal workers on the Southern Pacific Railway System are waiving their contractual rights to future repairs to copper tubing. References made to the repairs to this tubing are simply made to acquaint the honorable board with the reason for the removing and replacing of the copper tubing.

Petitioner is well aware of the fact that pipe work, including tubing, is not reserved exclusively to pipefitters (sheet metal workers) under provisions of Rule 77, quoted supra. In this connection attention is directed to settlement of jurisdictional dispute included in the current agreement at pages 163 to 167, inclusive, and carrier's letter dated December 29, 1960, file SC GEN 152-540, to petitioner's former general chairman in connection with oil lines (pipes) on diesel locomotives, which latter work had been previously conceded as machinists' work. Attention is further directed to carrier's letters dated December 7, 1960, January 25 and June 6, 1961, March 28 and May 24, 1962, representing other cases that petitioner's representatives have alleged the work there involved to be reserved exclusively to sheet metal workers, which contentions were not supported by facts.

As additional support of carrier's position in this case, attention is directed to the principles controlling in this board's awards Nos. 2186, 2475, 2530, 2803, 2823, 2883, 3133, 3276 and 3433, Third Division Award No. 10600 (referred to hereinabove), and Fourth Division Awards Nos. 1412 and 1659.

It is a principle too well established by all divisions of this Board to warrant citation that the burden of proving a disputed contention rests upon the party who relies upon it to maintain its position. This the petitioner has failed to do, and consistent with those awards, the instant claim must fail.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it 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 waived right of appearance at hearing thereon.

This claim is based upon the repair of an automatic vending machine leased by the Carrier under an agreement whereby the lessor makes repairs thereto. It appears that for many years vending machines for the convenience of employes have been installed at various points on the Carrier's property under similar arrangements, without any prior claim that employes of the Carrier are entitled to make the repairs.

Under these circumstances we are unable to find that these vending machines are the property of the Carrier or such an integral part of the car that repairs thereon are reserved to employes of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1965.

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