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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13182
Docket No. 13025-T
97-2-95-2-49**

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Sheet Metal Workers' International Association
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

- "1. The Carrier violated the provisions of the current and controlling agreement, when the Carrier assigned the Brotherhood of Maintenance of Way Employees the Sheet Metal Workers duties of dismantling, repairing and installing the sheet metal frame and sheet metal fire door on the pollution abatement facility.**
- 2. That accordingly, the Consolidated Rail Corporation be required to compensate Sheet Metal Workers R. T. Shonkwiler and M. J. Casadonte in the amount of 16 hours pay, each, for the above listed violation."**

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

As Third Party in Interest, the Brotherhood of Maintenance of Way Employees was advised of the pendency of this dispute and chose to file a Submission with the Board.

This claim arises from Carrier's assignment of a gang of four B&B Department employees headquartered at Collinwood Diesel Terminal in Cleveland to install a metal fire door at the Terminal's Fuel Abatement Plant on August 3 and 4, 1993.

This case boils down to the Organization's claim that the cutting and reframing of the sheet metal part of the assignment was work that should have been performed by a member of its Organization, and Carrier's contention that Sheet Metal Worker A. Nardone was one of the four employees who actually performed this assignment. The Organization presented a typewritten statement from Nardone indicating that he did not work on the door in question. Carrier rebutted this evidence with a statement from the Shoppe Manager indicating that the Foreman assigned four named individuals to this project, one of which was Nardone, and noting that the statement submitted by Nardone had his name misspelled.

Putting aside the various arguments of the Organization and Carrier regarding the merits of this claim, the record clearly establishes that an irreconcilable dispute as to essential facts exists. In such circumstances, this Board has routinely held that, in its appellate capacity, it cannot resolve such factual disputes, and that the underlying claim must be dismissed for failure of the Organization to meet the requisite burden of proof. See Second Division Award 11101; Third Division Awards 29297, 28924, 28401.

AWARD

Claim dismissed.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of December 1997.