**Award No. 1803**
**Docket No. 1672**
**2-NC&StL-SM-'54**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.**

---

## PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 83, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

**THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY**

**DISPUTE: CLAIM OF EMPLOYES:** (1) That the current agreements were violated when the Carrier on and subsequent to July 21, 1952 assigned the repairing of the heating system at the Union Passenger Station to contractors, which thereby damaged employes of the Sheet Metal Workers' craft, subject to the terms of said agreements.

(2) That accordingly the Carrier for the aforesaid work performed in the amount of 810 hours by the employes of the contractors be ordered to:

(a) Additionally compensate Sheet Metal Worker T. E. Johnson in the amount of 407 hours at the time and one-half rate.

(b) Additionally compensate Sheet Metal Worker Helper R. E. Jenkins in the amount of 403 hours at the time and one-half rate.

**EMPLOYES' STATEMENT OF FACTS:** At Atlanta, Georgia, the carrier installed a heating system at the Union Station during 1929 and 1930. The maintenance of this heating system, particularly the steam and water pipe repairing and all other work recognized as sheet metal workers' work has been exclusively performed by employes of the sheet metal workers' craft since November 25, 1946 until on or about July 21, 1952.

The carrier made the election to unilaterally contract out the repairing of this Union Station heating plant or system and beginning on July 21, 1952 a mechanic and an apprentice of the contractor commenced changing pipes and renewing pipes; removing and applying steam heat regulating valves, removing, repairing and replacing drain pipes to steam radiators, including other incidental repairs thereto and the insulation of the steam plant piping. These employes worked on the job from 8:00 A. M. to 4:30 P. M., with a lunch period of thirty minutes, Mondays through Fridays, and for their services the mechanic and the apprentice were each paid for 407 hours and 403 hours respectively.

hours from 8:00 A. M. to 4:30 P. M. to a time which would have enabled claimants to work both their regular assignment and then work on the heating system job.

In view of the foregoing it is obvious that there is no basis for the contention that claimants were damaged or that they are entitled to the additional compensation requested.

* * * * *

In conclusion carrier submits:

(1) That in view of the intricacies involved in the over-all job of renovating and modernizing the heating system at the Union Passenger Station, coupled with the fact that carrier did not have the necessary qualified personnel to perform the work with its own forces, carrier's action in contracting the work out was not violative of the current agreements and its action is supported by the awards heretofore cited.

(2) In view of the propriety of the project in question being contracted out, there is no basis for the contention that employes of the sheet metal workers' craft were damaged.

(3) As claimants were regularly assigned during the period of time involved and received the compensation provided by their regular assignment on each day involved in the claim, coupled with the fact that it would not have been feasible for claimants to have worked both their regular assignment and also on the heating system, there is no basis for any contention that claimants were damaged or entitled to the additional compensation requested.

In view of the foregoing facts there is no basis for the instant claim and same 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 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.

The parties to said dispute were given due notice of hearing thereon.

On or about July 21, 1952, carrier contracted with an independent contractor for the repair of the Union Station heating plant at Atlanta, Georgia. The organization contends that the work belonged to them under a Memorandum Agreement entered into on November 25, 1946, whereby certain work at the Atlanta Union Station and Coach Yard was given to the sheet metal workers. The work was described in the Memorandum Agreement as follows:

> "All water lines, (except the water lines from the meter at Forsyth Street to tank at Foundry Street,) at the Union Station, including lines to the tracks connecting to the water boxes and including water boxes, water lines to the Coach Yard, mechanical service building, Pullman mechanical service buildings, meat and automobile platforms, northbound Freight Transfer platform, all steam pipe work, including heating system in all buildings, i. e., main station buildings, mail and baggage rooms, express office, Union News Company room, telegraph office, Station Master's office, Police office, Enginemen and Trainmen's washrooms, Chief Joint Inter-

change office, N. C. & St. L. and Pullman Mechanical service buildings, meat and auto platforms, northbound freight transfer, and all steam lines to the coach yard and station tracks. All air lines in this territory. Steam heat work in the freight house, provided it is not done by the S. A. L. Railway and N. C. & St. L. employees are called on to do it."

The only question to be determined is whether or not the carrier had the right to contract the work to an independent contractor under the circumstances and conditions disclosed by the record.

The record shows that carrier's passenger station at Atlanta was constructed in 1929-1930 by an independent contractor. The heating system was a part of the construction job. Maintenance and repair work on the heating system was performed by carrier's employes until the program here complained of was undertaken. In the winter of 1951-1952, the heating plant performed unsatisfactorily and carrier contracted with an independent contractor to put it in good condition. The organization contends that the work was a repair job involving no special skills or equipment to perform it. Carrier's position is that it was necessary to diagnose the cause of the heating plant failure, redesign it to meet present needs, and remodel and modernize it to assure a proper functioning of the plant. It contends that its employes did not have the skill to do the work and that it was necessary to contract the work to an independent contractor specially skilled in this type of work. It urges further that as the heating plant was originally constructed by an independent contractor, the redesigning and modernization of the plant could likewise be contracted.

Carrier states that the Atlanta passenger station heating system is the only one of its kind on its railroad. It is described as a split system combining the use of steam and electric motor driven fans. It is supplied with overhead steam to cast iron radiators and unit heaters concealed in the walls from which heated air is furnished to each of the rooms in the station. The waiting rooms are heated by unit heaters in the walls which are controlled by valves and traps. The air is circulated around the unit heater by the use of electric fans.

The contractor's engineers found that the heating transfer coils were inefficient, electric motors were operating at reduced speeds, heating outlets were not properly functioning, filters were not installed, automatic controls were needed, and the pressure reducing station was in bad condition. It was necessary to use electricians, sheet metal workers, steamfitters and a welder to do the work. We point out at this point that the organization does not contend that all the work performed was sheet metal workers' work.

It is the general rule, we think, that management may farm out work when the evidence is sufficient to warrant the exercise of managerial judgment as to whether carrier has the men, equipment and facilities to perform the work within a reasonable time under all the circumstances of the case. It having contracted work to employes of a particular craft it will not be permitted to farm it out except when the facts and circumstances show that it was not reasonably contemplated that such work was included within the terms of the agreement. The decision of such a dispute rests largely upon the facts and circumstances of each case and the determination of whether or not the carrier had any reasonable basis for contracting the work after giving consideration to the schedule agreement. See Award 2338, Third Division.

In this case the carrier takes the position that the heating plant at the Atlanta passenger station was unique, complicated, intricate and of such a character that its officers and employes lacked the qualifications and experience to overhaul it. We call attention to the fact that this is contrary to

the position taken by the carrier when it contracted "all steam pipe work, including heating system in all buildings, i. e., main station buildings . . ." at the Atlanta Union Station to the sheet metal workers. It would seem that the carrier had no fears as to the qualifications of its employes to do this particular work when the Memorandum Agreement was made.

It is argued, however, that carrier lacked heating engineers and supervisory officers who had the ability to diagnose the trouble and supervise the repairs to be made. From this it is contended that the carrier was not obligated to split up the work and could properly farm out the whole of it. This is the general rule. Award 3206, Third Division, points up this principle. It seems clear from the record before us that the carrier was lacking in competent engineers and supervisors only. These could have been obtained. We have searched this record diligently in an attempt to find any work that carrier's craft employes could not have performed. We found none. It seems clear to us that if carrier had provided competent engineers and supervisors, all of the craft work, including that of sheet metal workers, could have been done by them. We do not think the holdings of the awards of this Board that carrier need not divide a project applies as between professional engineers and supervisors on the one side and craft employes on the other. If plans and specifications for the work to be done had been provided, together with supervisors capable of overseeing the work, the work could have been done by carrier's employes. There is no evidence in this record that employes of the carrier did not have the skill, equipment or facilities to perform the work of repairing and overhauling the heating plant in the Atlanta passenger station. Employes may not be deprived of work contracted to them because of a want of competent personnel in the engineering and supervisory departments. We conclude, under the record before us, that the work of the sheet metal workers was contracted in violation of the current agreement.

Carrier insists that it has the managerial right to determine when or where it may not farm out work. We agree with this statement when the evidence is sufficient to sustain the exercise of such judgment. But when, as here, the record does not disclose that craft employes could not do all the craft work involved with the equipment and facilities at hand, the basis for the exercise of managerial judgment does not exist. Craft employes may not be deprived of work contracted to them solely because carrier fails to provide trained men or competent supervisors to make expert determinations and decide upon the corrective measures to be taken.

The record shows that claimants were working on regular assignments during the time the work was done. From this it is argued that they suffered no damage. If this be so, the carrier by reducing forces or refusing to employ an adequate number of employes could circumvent the agreement with impunity. It is the function of the organization to police the agreement and protect the contract rights of the employes it represents. When work is lost to the craft, a recovery for such lost work may be had. It may be that the claimants named would have been required to work overtime if the work had been given them or that, as here contended, they could not have performed it at all if they worked their regular assignments. But this does not excuse the contract violation. It is the carrier and not the organization that has the means to marshall its forces to avoid such contingencies. There can be only one recovery for the breach and it may not be defeated because carrier kept its employes working on other work during the time the contracted work was performed.

The hours claimed are not sustained by the record. It appears that there were 379 hours of sheet metal and steam fitter's work and 324 hours of steam fitter helper's work. The claim is valid to this extent.

Claimants are not entitled to the time and one-half rate. The value of work lost is the pro rata rate. It is sustained on that basis.

**AWARD**

Claim sustained per opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1954.

**DISSENT OF CARRIER MEMBERS TO AWARD 1803**

The majority states that:

> "It seems clear from the record before us that the carrier was lacking in competent engineers and supervisors only. These could have been obtained. We have searched this record diligently in an attempt to find any work that carrier's craft employes could not have performed. We found none. It seems clear to us that if carrier had provided competent engineers and supervisors, all of the craft work, including that of sheet metal workers, could have been done by them."

By such reasoning in a case such as here, the carrier would be compelled to go to the expense of temporarily employing competent engineers or supervisors to supervise and instruct railroad mechanics in the performance of the work. In other words, the carrier is required to split the work between supervisors and mechanics in order to perpetuate a totally unrealistic monopoly conception of a scope rule.

No evidence was produced to show that the carrier could hire such temporary supervision or that an engineering firm would agree to furnish such supervision unless its mechanics would perform the work. Carrier stated in the record that mechanics' work, other than sheet metal work, was performed by mechanics employed by the contractor and that if it had attempted to use its sheet metal workers on the work complained of here, the employes of the contractors would have refused to work with them; that mechanics employed by the contractors will work only with members of the building trade unions and not with mechanics within the same craft employed by the railroads. This was not denied.

Under this award, a beautiful windfall is granted to two employes who were employed by the carrier during the entire time of the claims and, in addition, on certain days participated in overtime work for which a penalty was paid.

During the hearing before the referee, the representative of the employes recognized the absurdity of this claim by modifying it. He stated that these men were entitled to one hour per day at the overtime rate, because the contracting force worked one hour beyond the normal quitting time of the claimants, and payment for rest days of the two claimants.

These employes were not available for the work involved in the claim, because the carrier used and paid them for work performed under the agreement. They were not damaged, neither did they lose any time. Yet because the majority decides that sheet metal workers were deprived of work, someone should get a gratuity payment for 379 hours of sheet metal and steam fitter's work and 324 hours of steam fitter helper's work.

The agreement makes no provision for paying a penalty in a case of this kind, and by such an award, a new rule is written into the agreement. The divisions of the Adjustment Board have no such power. The carrier is not

required to pay a penalty unless the penalty is provided for in the agreement. There is no run-around rule or any other rule which by any stretch of the imagination could be deemed to be a penalty rule.

For these reasons, the award is invalid and we dissent.

**T. F. Purcell**
**J. A. Anderson**
**D. H. Hicks**
**R. P. Johnson**
**M. E. Somerlott**