

Award No. 2873

Docket No. 2810

2-B&O-SM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier improperly assigned other than Sheet Metal Workers to perform Sheet Metal Workers' work on Piers 3 to 10 inclusive at Locust Point, Baltimore, Maryland.

2. That, accordingly, the Carrier be ordered to compensate Sheet Metal Worker Fred Kircher and Sheet Metal Worker Helper L. R. Woodward, each, at eight (8) hours' pay at the pro rata rate for January 31, 1956, and all subsequent dates on which the above referred to work was performed.

EMPLOYEES' STATEMENT OF FACTS: Mr. Fred Kircher and Mr. L. R. Woodward hereinafter referred to as the claimants, are employed as sheet metal worker and sheet metal worker helper, respectively, by The Baltimore and Ohio Railroad Company, hereinafter referred to as the carrier.

The carrier awarded a contract to the Kinnear Manufacturing Company, Inc., to renew, repair and replace certain sheet metal sections, of approximately 20 gauge sheet metal, of the rolling doors on Pier Buildings No. 3 to 10 at Locust Point, Baltimore, Maryland. The Kinnear Manufacturing Company, Inc., employes were assigned to, on or about January 31, 1956, and subsequent dates, and did perform this sheet metal work of renewing, replacing and installing these sheet metal sections on fire doors of the buildings.

None of the above-mentioned work was performed by employes of the sheet metal workers' craft who are in the service of the carrier.

This dispute has been handled on up to and with the highest officer, so designated by the carrier, who has declined to adjust it, and a copy of his declination, dated October 9, 1956, is submitted herewith, identified as Exhibit A.

Moreover the Carrier's Sheet Metal Workers in the Water Station Forces of the Maintenance of Way Department on the West End Baltimore Division were not even available to do this work:

In this case time was a factor. Time was of the essence of the contract entered into with the Kinnear Manufacturing Company. It was essential that this work on the doors be done immediately and expeditiously. At the time this work was done no sheet metal workers of the Maintenance of Way Department were furloughed on the district. The existing force was simply not available to do the work for the obvious reason that their time was completely consumed with other important projects. In order to provide protection to cargo stored on the piers, it was necessary that the doors be given immediate attention.

In handling this case on the property the committee did not dispute the fact that the existing force was not available to do the work.

CARRIER'S SUMMARY:

In summary the carrier submits as follows:

- (1) The "Kinnear Steel Rolling Service Door" is an intricate piece of machinery.
- (2) There is a skill involved in work on the doors not possessed by the carrier's sheet metal workers.
- (3) The Kinnear door is a custom-built installation.
- (4) Under any circumstances the working rules do not give sheet metal workers right to perform the work.
- (5) Moreover the carrier's sheet metal workers of the water station forces were not even available to do the work.

For all the reasons asserted above, the carrier submits that this claim is not valid and ought to be declined. The carrier respectfully requests that this Division so hold and that the claim be declined in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record 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.

Claim is now advanced for Sheet Metal Workers at Locust Point, Md., because the carrier did not use them to renew, replace and repair certain sheet metal doors on pier buildings. It is claimed that Rule 114 has been violated. Briefed, the rule reads:

"Sheet metal . . . work shall consist of . . . building, erecting . . . installing . . . and maintaining parts made of . . . galvanized iron of 10 gauge and lighter."

The carrier shows that the Kinnear Co. had the original contract to install the doors and for the past several years has kept its employes on the property and was given the present contract to service the doors.

We are of the opinion that the doors in question are a part of the structures, and that the classification of work rule as it was originally agreed was not intended to include the installation and servicing of special purpose and specially designed doors. This finding does not abrogate the parties agreed understanding that fire-door work inside bulidings shall be done by sheet metal workers.

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 23rd day of May, 1958.

DISSENT OF LABOR MEMBERS TO AWARD 2873

There is no exception in the applicable rules of the controlling agreement to justify the majority's conclusion that the instant work did not belong to sheet metal workers to the exclusion of all others. Since the agreement contains no exception the findings and award of the majority are improper.

For the foregoing reasons we are constrained to dissent from the findings and award of the majority.

/s/ R. W. Blake

/s/ C. E. Goodlin

/s/ T. E. Losey

/s/ E. W. Wiesner

/s/ James B. Zink