

Award No. 2937

Docket No. 2826

2-B&O-SM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Kiernan 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 Pier No. 6 at Locust Point, Baltimore, Maryland.

2. That, accordingly, the Carrier be ordered to compensate Sheet Metal Workers Ronald J. Baldwin and E. Hall and Sheet Metal Worker Helpers Thomas A. Coater and Jessie S. King, 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: Sheet Metal Workers Ronald J. Baldwin and E. Hall and Sheet Metal Worker Helpers Thomas A. Coater and Jessie S. King, hereinafter referred to as the claimants, are employed by The Baltimore and Ohio Railroad Company, hereinafter referred to as the carrier.

The carrier awarded a contract to the J. M. Cain and Company, general contractors, to renew and replace 20 gauge sheet metal galvanized iron siding on building at Pier six (6), Locust Point, Baltimore, Maryland. The J. M. Cain and Company employees were assigned to on or about January 31, 1956, and subsequent dates, and did perform this sheet metal work of renewing and replacing the 20 gauge galvanized sheet metal iron siding to the building.

None of the above-mentioned work was performed by employees 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

The sheet metal workers in the water station forces were not even available to handle this project:

The committee did not dispute that the sheet metal workers in the water station forces were not even available to do this large job. The committee did not plead that the sheet metal workers in the water station forces were available to perform the work. The sheet metal workers, including the claimants, were completely occupied in many other urgent assignments on the seniority district. These could not be postponed or deferred. The existing force was not available to perform the work within the time required to make the renewals.

CARRIER'S SUMMARY:

The committee pleads sheet metal workers' Special Rules 113 and 114 and shop craft Rules 28 and 29. But neither these rules nor the balance of the rules in the agreement can have any application in this case. The sheet metal workers have no claim to this work by authority of any rule appearing in the Shop Crafts' Agreement.

Actually, the carrier is at a loss to explain the wage claims made in this case. The claim comes from Sheet Metal Workers R. J. Baldwin and E. Hall and Sheet Metal Worker Helpers Thomas A. Coater and Jessie S. King. But all these employes were working full time during the time the contractor was employed on this project.

These employes as well as all other employes in the water station forces were working full time on other projects on the West End Baltimore seniority district. These other projects could neither be deferred, postponed nor abandoned. When this case was discussed locally on the property the committee did not dispute that neither the claimants nor the balance of the water station forces were available to perform the work or that they could have been pulled off other important projects.

The carrier was confronted with but one alternative: that alternative was to contract out the work to have it accomplished in as expeditious a fashion as possible.

Based on the factual record the carrier submits that the employes claiming here can have no proper claim to this particular work. The carrier asserts that these claims are not valid and ought to 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.

The work in dispute consisted of the application of sheet metal siding on Pier No. 6, Locust Point, Baltimore, Maryland. Claimants contend that the work, which was performed by an independent contractor, was that of Sheet Metal Workers.

Rule 114 of the controlling agreement clearly classifies the work of Sheet Metal Workers. In that rule we find "Sheet Metal Workers" work shall consist of tinning, coppersmithing and pipefitting in Shops, Yards, buildings * * *." The rule ends by these words: "And all other work generally recognized as sheet metal workers' work."

The outside maintenance of buildings is not generally recognized as sheet metal workers' work. The work performed by the contractor was not "work in a building."

We hold, therefore, that the Carrier did not improperly assign other than Sheet Metal Workers to perform Sheet Metal Workers' work, as claimed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2937.

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/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner

/s/ James B. Zink