

Award No. 3300

Docket No. 3072

2-SOU-SM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Sheet Metal Workers)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier has violated the terms of the current agreement by contracting out the constructing of a 3 inch air pipe line in Inman Shop and Yards, Atlanta, Georgia, to persons other than Sheet Metal Workers that are covered by the current agreement.

2. That Sheet Metal Workers, H. B. Johnson, H. J. Landers, B. J. McDaniel and B. H. Evans, Atlanta, Georgia, be compensated forty (40) hours each at their regular time rate for having been deprived of their right to work on air line.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Workers H. B. Johnson, H. J. Landers, B. J. McDaniel and B. H. Evans, hereinafter referred to as the claimants, are employes of the Southern Railway Company, hereinafter referred to as the carrier, at Atlanta, Georgia. Claimants were furloughed and held an employment relationship with the carrier in Atlanta, Georgia, retaining their rights on the sheet metal worker seniority roster in the Atlanta Shops territory, which included Inman Shops and Yards, at the time this claim was instituted, and were eligible for call back to work under Rule 26 of the controlling agreement, the pertinent part of which reads:

"In the restoration of forces, senior laid off men will be given preference of re-employment, if available within a reasonable time, and shall be returned to their former positions."

The carrier contracted to the Henry Newton Company, hereinafter referred to as the contractor, the construction of a track fabrication plant in the Inman Shop and Yards. On or about January 7, 8, 9, 10 and 11, 1957, the contractor's employes constructed a 3 inch air pipe line from the outside wall of the air compressor room, that is located inside of the Inman Shop Yards, to the newly constructed track fabrication plant located approximately 1500 feet north of the air compressor room.

In Third Division Award No. 6492, Referee Whiting, it was held:

"* * *, under the rules set forth in Awards No. 5304 and 5563 and based on the evidence here presented, the work here involved must be considered as unusual or novel and not contemplated by the scope of the agreement between the parties."

* * * * *

As heretofore shown, all structural work at the track fabricating plant, installation of the main air reservoir and the three-inch air line leading from the air compressor to the main air reservoir were contracted in accordance with the past practice. Constructing the three-inch air line was but a small portion of the major construction job contracted, a construction job of great magnitude, involving a considerable undertaking. It is the only plant of its kind in existence.

Under the principles of prior Board awards, some of which are quoted above, work contracted out is to be considered as a whole and may not be subdivided for the purpose of determining whether some parts of it were within the capacity of the carrier's forces (Awards 3206, 4776, 4954, 5304, 5563, 6112 and others). Here the association seeks to sub-divide the work contracted by laying claim only to a small part of it. Numerous awards have held that this cannot be done, some of which are quoted above. Thus, under the principles of prior Board awards, the claim which the association here seeks to assert is not valid.

CONCLUSION

Carrier has shown that:

- (a) The effective agreement was not violated as alleged and does not support the monetary demand here made.
- (b) The principles of prior Board awards fully support the carrier's action.
- (c) Claim being without any basis and unsupported by the agreement, the Board has no alternative than make a denial award.

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 were given due notice of hearing thereon.

Claim is made here for four furloughed sheet metal workers for five days each, account of the carrier constructing a three inch pipe line in shop yards using the services of an outside contractor. It is asserted by the carrier that one mechanic with the help of two laborers finished the task by working part of three days.

Our decision must be based on the meaning to be attached to the memorandum of understanding of November 2, 1943 appearing on pages 104-5 of the schedule. That memo was intended to dispose of sheet metal worker's rights as involved with certain maintenance of way employees.

Specifically it was agreed:

"4. Nothing in this memorandum shall . . . alter past practices as to performance of work in the M. of W. department . . . by M of W employees.

Nothing in this memorandum alters . . . present understandings as to . . . pipe work in the shopyards, nor . . . prevent continuing the past practice as to contracting certain jobs in new construction or renewal."

The carrier has shown that this was new construction under the maintenance of way department and was similar to scores of other installations which it had been the practice to contract out.

A W A R D

The claim is denied. The memorandum anticipated and permits such action.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of July 1959.

LABOR MEMBERS DISSENT TO AWARD NO. 3300.

The work involved in this docket is sheet metal workers' work in accordance with the terms of the current agreement in effect between the parties. The Scope of the Agreement covers employees of the sheet metal workers' craft in the following departments:

Maintenance of Way (Bridge and Building, where separate from Maintenance of Way Department)
Maintenance of Equipment
Maintenance of Signals (Signal and Electrical Department)

The majority state in the award that the work in question was performed in the Maintenance of Way Department, therefore it was covered by the Scope of the effective agreement between the parties.

The majority, on the Memorandum found on pages 108 and 109 — the pertinent parts of this Memorandum are here quoted —

" * * * (4) Nothing in this memorandum shall or shall be deemed to alter past practices as to performance of work of the M of W Department heretofore performed by M of W employees.

Nothing in this memorandum alters or amends present understandings as to wrought iron pipe work in shop yards, nor shall prevent

continuing the past practice as to contracting certain jobs in new construction or renewal. * * * .”

chose to ignore Mr. W. H. Baldock's verbal statement at the hearings, also his written statement, which is a part of the Employes Submission, Exhibit G, that the past practice in effect at the time the Memorandum was negotiated, “was that Sheet Metal Workers did this type of work” and the Memorandum did not in any way change said practice. Mr. Baldock participated in negotiating the above Memorandum.

Therefore, Award No. 3300 is erroneous.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink