

Award No. 3433
Docket No. 3310
2-L&N-SMW-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Sheet Metal Workers)**

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1 — That under the current agreement other than Sheet Metal Workers were improperly used to perform the work of installing, erecting and assembling all pipefitting and duct work in connection with the installation of all air-conditioning units and their appurtenances at the Passenger Station, Evansville, Indiana.

2 — That accordingly the Carrier be ordered to compensate the hereinafter named employes for forty (40) hours each at time and one-half rate of pay applicable on the date of September 27, 1957. The classification and their names follow:

C. E. Wolf Pipefitter and Tinner

W. O. Cunningham Pipefitter and Sheet Metal Worker

EMPLOYEES' STATEMENT OF FACTS: Under the approximate date of September and October, the carrier did contract out to the Kauch Contracting Company, dealers in air conditioning equipment the air conditioning of the old passenger station, which includes offices and other rooms in the building. The type of air conditioning equipment consisted of four individual units of approximately 5 and 10 tons each. These units were located in various parts of the building and were piped with copper tubing and galvanized pipe, these pipes made of copper were all installed by soldering and sweating the joints to valves and fittings throughout the entire circuit. There was approximately 200 feet of this copper tubing in the entire hookup on these units. The galvanized pipe consisted of three-quarter inch in diameter pipe and one-inch in diameter and one and one-half inch in diameter pipes, used for water and there were approximately 200 feet of this type pipe connected with unions and nipples, threaded on each end. The duct

warranty from the date of installation against defects in workmanship and material. Copy of contract is submitted herewith.

POSITION OF CARRIER: Carrier submits that there is nothing in the current agreement with the sheet metal workers, dated September 1, 1943, copy of which is on file with this division, supporting the position of the employes that the installation of air conditioning is work belonging to them.

Rule 87, Classification of Work, provides:

"Sheet Metal Workers' work shall consist of thinning, copper-smithing and pipefitting in shops, yards, buildings, including general office buildings, and on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling, and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter, including brazing, soldering, tinning, leading and babbitting; the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes; the operation of habbitt fires, oxy-acetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work."

This rule is practically identical with Rule 126 covering sheet metal workers' special rules as shown on page 51 of the agreement between the United States Railroad administration and the employes represented by the Railway Employees Department of the American Federation of Labor, dated September 20, 1919.

Certainly at the time this classification of work rule was adopted there was no innovation such as a complex system of air conditioning contemplated. It must follow, therefore, that not being in existence it could not have been the intent of the parties at the time the rule was negotiated to cover such an installation. This is particularly true since the installation of air conditioning involves a specialized skill and one which the carrier's employes at Evansville have not had the opportunity to acquire. It is intended, however, that to the extent possible its employes will maintain this equipment.

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.

This claim arose at Evansville, Indiana, when the carrier contracted with George Koch Sons Inc., to install air conditioning in its passenger station. The contract for the installation included the provision that all equipment, material and labor was to be furnished and that a one year warranty from the date of installation against defects in workmanship as well as materials would also be included.

The Organization's claim states that the current agreement provides that this type of work, so far as the installing, erecting and assembling all pipefitting and duct work in this connection belonged to the Sheet Metal Workers and that they should be compensated for the violation of the agreement.

The record discloses that the contractor was the local agent for a national manufacturer of a patented air conditioning unit. It was not the small air conditioning unit that only requires necessary connecting for successful operation, although in parts of the offices on one of the top floors several of these were used, but the unit that was to do the cooling for the passenger station and the remaining offices was the complex outside tower type to be located on the marquee. This unit was to be designed, fabricated and installed in accordance with the American Society of Heating and Ventilating Engineer's standards.

The carrier reserved the right and did assign to its employes work that could properly be performed by its employes, such as certain electrical work and passages for duct work, but to guarantee the unit itself and its successful operation it was necessary to permit the manufacturers agent to do the work in dispute.

Air conditioning of this type was relatively new and there is nothing in this record to show that the Sheet Metal Workers had ever made such an installation. It required protection against failure as it was not a standardized operation and was more or less in the experimental stages.

We feel that Award 2530 of this Division calls our attention to the problems that may arise when improper installation of air conditioning systems are made.

We find that the carrier had the right to engage the George Koch Sons, Inc., to furnish and install this equipment as per the contract presented as evidence in this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1960.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3433

Contrary to the findings of the majority expressed in Award No. 3433, the type of work subject of this dispute has been performed by the Sheet Metal Workers subject to the controlling agreement in effect between this Carrier and System Federation No. 91.

Rule 87, Classification of Work Rule for Sheet Metal Workers' reads in part:

"Sheet Metal Workers' work shall consist of tinning, copper-smithing and **pipefitting** in shops, yards, **buildings**, including general office buildings, * * * **the building, erecting, assembling, installing,** dismantling and maintaining parts made of sheet copper, * * * **black, planished, pickled and galvanized iron of 10 gauge or lighter** * * *."

The work involved in this dispute was pipefitting and duct work, said ducts were made of galvanized iron and installed in a depot and office building — said work is covered in Rule 87.

The Carrier used Electrical Workers covered by the controlling agreement to perform certain of their work and maintenance of way employes to perform some work but deprived the Sheet Metal Workers of the right to perform their work as provided for in the controlling agreement — therefore, Award No. 3433 is in error and we dissent.

R. W. Blake

Charles E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink