

Award No. 3559

Docket No. 3082

2-AT&SF-SM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES
DEPT., A. F. of L. - C. I. O.
(Sheet Metal Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY SYSTEM**

DISPUTE: CLAIM OF EMPLOYES:

1) That under the terms of the controlling agreement the Carrier improperly contracted with Whitnell and Company, Albuquerque, New Mexico, the installation of a heating and cooling system in the Carrier's Freight House Office Building at that point.

2) That accordingly the Carrier be ordered to

(a) Cease and desist from using others than Sheet Metal Workers to perform work coming under the scope of the Sheet Metal Workers' contract with the Carrier.

(b) Additionally compensate Messrs. W. M. Sanders and L. W. Dawson, Sheet Metal Workers, at their established overtime rate for the periods April 11, 22, 23, 24, 25, 26, 29 and 30, and all other subsequent dates the Carrier's records show the Employees of Whitnell and Company performed the work of installing the piping system in connection with the installation of a heating and cooling system in the Carrier's Freight House Office Building at Albuquerque, New Mexico.

EMPLOYES' STATEMENT OF FACTS: Sometime prior to April 11, 1957 (the exact date is unknown) the carrier contracted with Whitnell and Company to install a heating and cooling system in the carrier's freight house office building. This heating and cooling system in the carrier's freight house office building is activated by a package unit with a trade name of "York Air Conditioning Unit". However, this trade name is a misnomer to the common understanding of air conditioning. It is an air conditioning unit to the extent it either cools or heats the air. This air conditioning unit consisting of four (4) parts—namely, the compressor, the motor, the receiver and the converter, was received unassembled at Albuquerque. These four (4) components of the air

The pipe work involved in this dispute was an integral part of the parcel of combination heating and air conditioning units and was incidental to the installation of the units. This Board has ruled that the carrier is not required to split up work in order to retain a part of it for its employees when such work is incidental to and a part of the whole project as in this case. In Second Division Award 2186, this Board stated—

“ * * * it is the opinion of the Board that the project should be treated as a whole in determining whether a proper basis existed for the contracting of the work. A Carrier is not required to split up work and contract a part and retain a part for its employees to perform when the whole project is of such a nature as to warrant the carrier, in a reasonable exercise of its managerial judgment, to contract work. Awards 4954, 5304, 5563, Third Division.”

See also Second Division Award ²458.

In conclusion, carrier asserts that —

(1) The primary purpose of the installation was the air conditioning feature which does not come under the provisions of the agreement rules cited by the employees.

(2) The claimants were not qualified to satisfactorily install the complete air conditioning system, since they were inexperienced in that type of work and had not previously performed such service for the carrier.

(3) The pipe work was an integral part of and incidental to the parcel of heating and air conditioning units, therefore, making it impractical to split up the work between the contractor and the carrier's employees .

(4) The claimants did not suffer any monetary loss during the time the heating and air conditioning system was being installed by the contractor (Whitnell and Company).

Carrier directs this Honorable Board's attention to the fact that the employees have made claim to the pipe work at time and one-half rates of pay for April 11, 22, 23, 24, 25, 26, 29, 30 and all other subsequent dates the carrier's records allegedly show that the employees of the contractor (Whitnell and Company) performed the work of installing the piping system in connection with the installation of the heating and air conditioning system. Carrier asserts that the work did not begin on the installation until April 12, 1957 and that this Board has firmly established that claims involving the performance of work by other than the class to which the work is allegedly assigned, if sustained, and the carrier emphatically contends that the employees' claim does not merit such a decision, is sustainable only at the straight-time pro rata rate of pay.

Carrier asserts that the employees' claim is without merit and support of the agreement rules, therefore, respectfully requests this Board to deny it in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The carrier engaged an independent contractor to furnish and install in its two story and basement Freight House Office Building at Albuquerque, a centralized air conditioning system consisting of a fifteen ton York air conditioning unit in the basement, water chillers, piping, and a cooling tower erected on the roof. The parts and accessories were delivered and the installation work done by the contractor's employees under a single contract. The employees of the contractor who performed the installation work were factory trained in the installation and servicing of York Corporation's air conditioning systems.

The claimants maintain that a portion of the installation work belonged to them under the sheet metal workers' classification of work rule pertaining to pipe fitting, and that the carrier wrongfully delegated such work to the contractor's employees. Specifically they contend that the installation of all pipe work necessary to carry hot and cold water from the package unit (York air conditioning unit) to the radiators is separate and apart from the installation of the York unit and belongs to sheet metal workers.

The carrier represents that the pipe work was an integral part of the air conditioning system as a whole, that it was impracticable to operate it from the entire undertaking, and to do so would unreasonably interfere with satisfactory completion of the whole project.

The situation disclosed by this record supports the carrier's position. This project should be viewed as a whole in determining whether a proper basis existed for contracting all of the work. The carrier is not required to divide the work by contracting part and retaining part for its employees to perform, where the project is of such a nature as to warrant the reasonable exercise of managerial judgment in contracting the project as a unit. Award No. 2186 and others therein cited.

In this case it is conceded that the carrier properly contracted for installation of the air conditioning unit, water chillers and cooling tower, and we are unable to say that in the circumstances it was unreasonable for the carrier to include installation of piping in its contract for the air conditioning system as a whole.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1960.

LABOR MEMBERS DISSENT TO AWARD NO. 3559

The majority in the findings admit that the work involved in this dispute is pipefitting work. Rule 83 of the current agreement reads in part:

"Sheet Metal Workers' work shall consist of tinning, coppersmithing, and pipefitting in shops, yards, buildings, and on passenger coaches and engines of all kinds, * * * *"

Sheet Metal Workers were deprived of the right to perform their work as provided for in Rule 83 of the controlling agreement, therefor Award No. 3559 is in error.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink