

Award No. 3760

Docket No. 3501

2-SOU-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson 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

DISPUTES: CLAIM OF EMPLOYEES: "1. That the Carrier has violated the terms of the current agreement by contracting out the constructing of gas pipe line in Spencer Shop and Shop Yards, Spencer, South Carolina, to persons other than Sheet Metal Workers that are covered by the current agreement.

2. That the following Sheet Metal Workers be compensated for eight (8) hours for each date listed below, at \$2.476 rate of pay per hour:

B. R. Withers, Jr., November 26, 27, 28 and 29, 1957, a total of 32 hours.

H. G. Henderson, November 26, 27, 28 and 29, 1957, a total of 32 hours.

R. H. Zimmerman, November 26, 27, 28 and 29, 1957, a total of 32 hours.

Wilbur L. Lomax, November 26, 27, 28 and 29, 1957, a total of 32 hours.

Clyde A. Miller, December 2, 3, 4, 5 and 6, 1957, a total of 40 hours.

A. H. Shuping, December 2, 3, 4, 5 and 6, 1957, a total of 40 hours.

F. A. Goodman, December 2, 3, 4, 5 and 6, 1957, a total of 40 hours.

for having been deprived of their contractual right to work on the gas pipe line."

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Workers B. R. Withers, Jr., H. G. Henderson, R. H. Zimmerman, Wilbur L. Lomax, Clyde A.

and painted it with aluminum paint. The contractor was equipped with devices for correctly aligning and holding the pipe and fittings for welding and had in his employ welders versed in pipe welding. Special tools, skills and equipment were required for completion of the job in a satisfactory manner. Then, too, the work had to be performed as expeditiously as possible.

The claim and demand which the Sheet metal Workers' International Association here attempts to assert involves only the pipe work. It is, therefore, clear that the claim and demand involve only a part of the construction job contracted.

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 Carrier's forces (Awards 3206, 4776, 4954, 5304, 5563, 6112, and others). Here, the Sheet Metal Workers' International Association seeks to subdivide the work contracted by laying claim to only a part of it.

Then too, no exclusive right to pipe work is granted by the terms of the agreement in evidence. Nor as evidenced by the record has pipe work been exclusively performed under an established practice. The employes do not have monopolistic rights.

Carrier's right to contract work in these circumstances has heretofore been recognized on numerous occasions as evidenced by the above referred to awards all of which negative the claim and demand.

The evidence is, therefore, clear that, aside from the fact that the effective agreement recognizes the management's right to contract the work here in dispute, such right is also recognized under the principles of prior Board awards.

CONCLUSION

Carrier has shown that:

(a) The effective agreement was **not** violated as alleged and does not support the claim and demand which the Sheet Metal Workers' International Association here attempts to assert.

(b) The principles of prior awards of the Board fully support the carrier's action in contracting construction of the gas pipe line system here involved and definitely negative the claim and demand here made.

Claim and demand being without any basis and unsupported by the agreement in evidence, the Board cannot do other 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.

This claim is identical in facts and Rules with that in Award No. 3759 and must be denied for the same reason.

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 16th day of June, 1961.

LABOR MEMBERS DISSENT TO AWARDS NOS. 3759, 3760, 3761

The work involved in these dockets 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 employes 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 admit in the award that the work in question was performed in the shop yards, 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. employes.

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. * * *”

The majority choose to ignore the evidence of record which is a part of the employes' submission, 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.

This Division has stated in previous awards "Work embraced within the Scope of an agreement cannot be removed therefrom and assigned to employes not subject to its terms." (See Award No. 1359).

Therefore Awards Nos. 3759, 3760 and 3761 are erroneous.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink