Award No. 3769
Docket No. 3583
2-L&N-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1 — That under the current Agreement other than Sheet Metal Workers were improperly used to perform the work of installing, making, erecting and assembling all duct work in connection with the installation of all air conditioning units and their appurtenances at the Union Passenger Station at Louisville, Kentucky.

2—That accordingly the Carrier be ordered to additionally compensate the hereinafter named employes for ten hundred and forty (1040) hours for 15 Sheet Metal Workers (Tinners) to be equally divided, except one claimant who will be in excess of the other 14 claimants, fourteen (14) at 69 hours each and one for 74 hours at the applicable rate of pay, December 1, 1957 to April 2, 1958. The classification and their names follow:

Mr. C. R. McCubbins	Tinner	74 hours
Mr. J. M. Swift	Tinner	69 hours
Mr. V. J. Leist	Tinner	69 hours
Mr. R. H. Day	Tinner	69 hours
Mr. Roy P. Collins	Tinner	69 hours
Mr. Norman Karrick	Tinner	69 hours
Mr. E. L. Hackensmith	Tinner	69 hours
Mr. A. F. Gardner	Tinner	69 hours
Mr. J. M. Bennett	Tinner	69 hours
Mr. J. A. Hoagland	Tinner	69 hours
Mr. R. C. Wetzel	Tinner	69 hours
Mr. C. P. Snyder	Tinner	69 hours
Mr. W. A. Schujan	Tinner	69 hours
Mr. Earl Berry	Tinner	69 hours
Mr. D. R. Bell	Tinner	69 hours
Total		1040 hours

EMPLOYES' STATEMENT OF FACTS: Under the approximate date of December, 1957, January, February, March and April, 1958, the carrier did contract out to the Stevnson's Engineering Company, dealers in air-conditioning equipment, the air-conditioning of the Old Union Passenger Station at

the flow of air, both hot and cold, and have spent much money in research, etc., it could not be expected that the railroad employe would develop the necessary "know-how" to properly install equipment of this type. Further it is important that carrier be in position to obtain warranty on both the equipment and installation, particularly so, as this is a field of "work" in which its employes have not been trained.

That the foregoing reasoning is sound is borne out by the findings in Award No. 2883 of this Division, Referee D. Emmett Ferguson.

Claim of employes is without merit, is not supported by the agreement, and should 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 respectfully 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 waived right of appearance at hearing thereon.

The duct work in question is clearly within the Scope Rule, which is not limited or qualified by other rules.

The Carrier's defenses are (1) that its Employes have not the experience or qualifications necessary for work of this kind; (2) that it has been a long standing practice on the property to contract such work; and (3) that in order to insure itself by obtaining a warranty in the purchase of the essential equipment it was necessary to use the contractor's forces to the extent required by the warranty agreement.

The first contention was disproved by affidavits showing the performance of essentially similar and sometimes even more delicate work in passenger cars and elsewhere by the employes. The other two contentions are denied by the Employes and are not established by proof. Part one of the Claim must therefore be sustained.

Neither the amount of time involved nor the respective amounts thereof due these respective Claimants, if any, is established by the record. Part two of the Claim must therefore be remanded for disposition on the property by the parties.

AWARD

Part 1 of the Claim is sustained.

Part 2 of the Claim is remanded in accordance with the Findings.

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.

DISSENT OF CARRIER MEMBERS TO AWARDS 3769 AND 3770

The majority's decision to sustain the claimants in these disputes is completely erroneous and contra to a previous dispute (Award 3433) involving the same parties, the same work, and literally the same ex parte submission of the employes. The decision of this Board in the instant disputes when considered along with the action of the Board in Award 3433, places an unfair burden upon the functions of management as it plans for future modernizing of existing buildings simply because this Board has given an unrealistic monopoly conception of a scope rule. Rule 87 was not violated. When Rule 87 was written, air conditioning of buildings was not contemplated by either party, and, therefore, this work was neither included nor excluded. Consequently, the employes could not claim that Rule 87 was violated.

There was no contracting or farming out of work belonging to these claimants in the instant disputes. The rights of the employes never attached until the carrier acquired possession of the equipment. Rule 87 does not abridge the right of the carrier to provide modernization of and additions to existing buildings. The purchase of air conditioning equipment installed with a warranty as to its functional operation was completely within the proper function of management.

As a practical matter, the work in these disputes is hardly the type of work that we could reasonably expect the carrier to undertake with the limited forces available assigned to locomotive and car repairs. The carrier was justified on the basis of judgment and previous experience (see Award 3433) in handling this work in the manner in which it was handled.

Many statements made by the employes were merely conjectures, and no probative evidence was offered to support the employes' position.

These employes were not available for the work involved in these claims, because the carrier used and paid them for work performed under the agreement. They were not damaged, nor did they lose time. In spite of this fact, the majority has decided that sheet metal workers should have been used and they are now entitled to a generous gratuity; however, the majority properly recognized that the employes' claims as to the hours involved were unsupported with evidence and the actual hours involved were to be properly adjudicated on the property.

This Division has held in many previous awards that extenuating circumstances such as (1) the great magnitude of the project, (2) the specialized nature of the project which makes it novel or unusual, and (3) the lack of available experience, know-how, supervision, and sufficient employes, are adequate reasons for awarding construction work by the carrier to outside contractors. In these disputes, all three reasons existed.

Rule 87 does not contemplate that the employes are entitled to perform work such as involved in these disputes. This Division erred in the issuance of this decision.

For these reasons, we dissent.

P. R. Humphreys
H. K. Hagerman
D. H. Hicks
W. B. Jones
T. F. Strunck