

Award No. 3868

Docket No. 3727

2-ACL-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. - C. I. O. (Sheet Metal Workers)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement other than Sheet Metal Workers were improperly assigned to fabricate and install duct work for air conditioning in Laboratory, Waycross, Georgia.

2. That the Carrier be ordered to compensate the following Sheet Metal Workers, S. H. Turner, W. E. Goover, C. J. Osburn, Jack Yawn, D. J. Bowen and D. A. Cason for 700 man hours at time and one-half rate, to be divided equally.

EMPLOYEES' STATEMENT OF FACTS: During 1958, the carrier started modernizing an existing building in the Waycross Shops, Waycross, Georgia, to house the laboratory. The employes in the building department did the necessary carpenter and masonry work; the electricians in the mechanical department (employed in the shop) did the electrical work. On December 1, 1958, a contractor began work on the fabricating and installation of duct work to be used in the air-conditioning of the building. This type of ducts are made of 20 gauge galvanized sheet metal of various sizes and lengths. Approximately 579 feet, along with 20 ells of various sizes were used. The carrier maintains a shop at Waycross, where a number of sheet metal workers are employed.

The sheet metal workers are well qualified to perform the work in question and the carrier has the equipment. Within the last few years they have fabricated and installed the air ducts used in air-conditioning the injector shop and the general office building located within the shop.

The claimants were thoroughly experienced in this type of work, however, instead of allowing the six claimants who hold seniority at this point to perform this work in dispute, the carrier elected to contract to outside contractor whose employes have no seniority on this road and is not under contract to do the work.

your attention to the following items in the contract between this company and Air Conditioning Corporation:

"4. All drawings, memoranda, ideas and information furnished by SELLER shall remain its property and shall be considered its business and trade secrets, received in trust and confidence for the sole purpose of erecting and operating said specified equipment.

5. The equipment shall be assembled and erected under the personal direction of a competent erecting engineer designated and provided by SELLER.

11. SELLER guarantees to repair or replace F.O.B. point of manufacture any part found by SELLER to be defective in material or workmanship within the period covered by such guarantee as is received by the SELLER from the manufacturer or supplier thereof."

The installing of all insulation on the duct work required of carrier was performed by its Maintenance of Way forces.

The organization, in progressing this claim on the property, endeavored to make capital of the fact that some years ago their craft was used in installing makeshift air conditioning systems in several of carrier's mechanical buildings by using discarded air conditioning equipment removed from some of its passenger equipment. These installations were made by the local mechanical officers without the consent of management, and in order to avoid publicity they used the sheet metal workers located there who were under their jurisdiction. These systems, as previously stated, were only makeshift arrangements and were far removed from the specially designed system installed in the oil laboratory, as well as other systems which have been designed for numerous buildings located elsewhere on the property. The fact that this unauthorized work was done by the sheet metal workers does not give them any rights to work of this type.

This Board, in Award No. 2530, in which it denied a similar claim, stated in part:

"It is clear that the work in question called for specialized skills not possessed by carrier's forces. . . . The operation of air conditioning systems is not as yet standardized, nor, as indicated by the experience in this case, entirely out of the experimental stage."

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 dispute arises out of the assignment of duct work to employes of an outside contractor instead of to the Carrier's sheet metal workers. The work

was performed in connection with the installation of a new heating and air conditioning system in a building owned by the Carrier at Waycross, Georgia. c

The rule is well established that work coming within the scope of the applicable labor agreement, cannot, as a matter of principle, be contracted out by the carrier, unless such work is specifically excepted in the agreement. See Second Division Awards 1439, 1559, 2956, and 3177. On the other hand, this and other Divisions of this Board have sustained a carrier's right to contract out such work when all the circumstances surrounding the case at hand clearly demonstrate that it obviously would be unreasonable or inequitable to have the work performed by employes included in the bargaining unit. See Awards of this Division 1803, 2186, and 3457; and of the Third Division 757, 2338, 5090, and 7841. However, the Divisions have evolved no pat, broad-gauged statement of applicable principles to govern all cases of permissible exceptions recognized by them in the interest of reasonableness and equity. Each case must be adjudicated on the basis of its specific facts. Yet, it should be noted that definite proof will be required to justify an exception from the general rule which is not expressly sanctioned by the labor agreement. Otherwise a trend could conceivably develop which would eventually deprive the agreement of its vitality.

In applying the above principles to the facts underlying the instant case, the Division has reached the following conclusions:

There can be no doubt that the duct work here in dispute is clearly covered by Rule 302 which is not expressly limited or qualified by other Rules. See Second Division Award 3769. Therefore, it should have been performed by the six Claimants in accordance with Rule 27 (a), unless such performance would have placed an unreasonable or inequitable burden upon the Carrier. We can find no such extenuating circumstances in the record before us.

It is correct, as contended by the Carrier, that the duct work in question was only a part of the new construction project. However, this fact standing alone does not necessarily and under all conditions except it from the coverage of Rule 302. (To do so it must be clearly shown that the disputed work was an integral part of the entire project incapable of being separated therefrom without undue hardship or risk to the Carrier.) We are of the opinion that no such showing has been made by the Carrier. On the contrary, the evidence on the record considered as a whole has convinced us that the duct work under consideration did not constitute an inseparable component of the whole installation but involved a distinctly separate operation which could well have been segregated from the other operations performed by the employes of the outside contractor without any harmful effects on the satisfactory completion of the whole project.

Moreover, the Carrier's sheet metal workers, among them four of the Claimants (Bowen, Cason, Groover, and Yawn), previously manufactured and installed some sheet metal air ducts in the Carrier's buildings at Waycross, Georgia. It is immaterial that said work was not authorized by the Carrier's top management but only by local supervision because the fact remains that its sheet metal workers demonstrated the necessary skill required to perform air duct work satisfactorily.

Furthermore, the Carrier's assertion that the new heating and air conditioning equipment was not its property until the installation was completed and operating has no bearing on the disposition of this case. Since we have found that the duct work in question constituted a separate part of the

whole project, it was covered by Rule 302, regardless of the respective property rights of the Carrier and the outside contractor.

Finally, the Carrier's argument that it would have been impossible for it to obtain the contractual guarantee for the installation of the heating and air conditioning system and its proper operation had the Claimants performed the duct work is not substantiated by the contract between the Carrier and the outside contractor (Carrier Exhibit No. 1). As a matter of fact said contract provides, among other things, that "the equipment shall be assembled and erected under the personal direction of a competent erecting engineer designated and provided by SELLER" (i.e., outside contractor). This provision seems to indicate that the contractor would have raised no objections to the performance of the duct work by the Claimants but only reserved the right to have it supervised by its engineers.

In summary, we hold that the Carrier violated Rules 27(a) and 302 of the agreement by not assigning the duct work here in dispute to the Claimants.

As a result, the Carrier is obligated to make the Claimants whole for the work lost. See Second Division Awards 1369, 1530 and 1803. It is undisputed that the work required 700 hours. Hence, the Claimants are entitled to 700 hours' pay at the pro rata rate. Their further claim for the time and one-half rate is, however, unjustified and, therefore, hereby denied. See Second Division Award: 2956 and other Awards cited therein.

AWARD

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November, 1961.