

Award No. 4711

Docket No. 4550

2-L&N-SM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when 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 Strawberry yards Yard Office at South Louisville, Louisville, Kentucky.

2. That accordingly the Carrier be ordered to additionally compensate the hereinafter named employes for one hundred and twelve (112) hours for 14 sheet metal workers (Tinnners-Pipefitters) at the rate of eight (8) hours each, at the applicable rate of pay as of May 1, 1962. This claim was started May 23, 1962 and each claimant was given a claim number running from No. 114H thru to 127-H, inclusively and each name of the claimants and hours claimed is as follows:

Time claim No. 114-H	Mr. J. M. Swift	8 hours
Time claim No. 115-H	Mr. J. A. Hoagland	8 hours
Time claim No. 116-H	Mr. L. C. Wetzel	8 hours
Time claim No. 117-H	Mr. W. A. Sujahn	8 hours
Time claim No. 118-H	Mr. E. Berry	8 hours
Time claim No. 119-H	Mr. I. E. Wilson	8 hours
Time claim No. 120-H	Mr. M. J. Bennett	8 hours
Time claim No. 121-H	Mr. W. W. Hunter	8 hours
Time claim No. 122-H	Mr. W. E. Fredwicks	8 hours
Time claim No. 123-H	Mr. C. T. Hobbs	8 hours
Time claim No. 124-H	Mr. R. Ballard	8 hours
Time claim No. 125-H	Mr. C. G. Mathews	8 hours
Time claim No. 126-H	Mr. G. F. Tetium	8 hours
Time claim No. 127-H	Mr. E. F. Leversy	8 hours

Total number of hours, all claimants — 112 hours

EMPLOYES' STATEMENT OF FACTS: Under the approximate date of May 23, 1962, the carrier did contract out to the Stevens Engineering Company, dealers in air conditioning equipment, the air conditioning of the South

was maintenance of an existing installation, a valid claim would lie if an outsider moved in and took work away from employees who had the skill and the contractual right to do the work. We are of the opinion that the work done was much more than maintenance and was more nearly new construction wherein some parts of the structure were salvaged and used in the new building."

As shown in this submission, page 2, this installation did not involve maintenance, but was a new installation in a new yard office.

In further support of its position, attention is also invited to Second Division Award 2186 and the Awards enumerated therein.

In view of the circumstances as set forth in the foregoing, carrier asserts the claim is without merit 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 employees 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.

In Award 3433 we found that under the circumstances shown the Carrier had a right to engage a contractor to install air conditioning equipment pursuant to a contract presented in evidence. In Award 3769 we found that the Carrier had not presented evidence to justify contracting for the duct work involved in the installation of air conditioning equipment.

The submissions in this case resemble those which resulted in Award 3769 in that the contract is not presented in evidence. Hence we are constrained to sustain part one of the claim.

We said in our findings in Award 3769 "neither the amount of time involved nor the respective amounts thereof due these respective claimants, if any, is established by the record". That is again true in this case. Hence part two of the claim must be disallowed.

AWARD

Part one of the claim sustained.

Part two of the claim disallowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May, 1965.