

**Award No. 4791**

**Docket No. 4726**

**2-SP(PL)-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.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

**SOUTHERN PACIFIC COMPANY  
(Pacific Lines)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current Collective Agreement, it was improper to assign others than Sheet Metal Workers to perform work coming under the Scope of the Sheet Metal Workers' Contract with the Carrier at Oakland, California, July 25, 1963.

**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 Sheet Metal Worker A. Loera in the amount of four (4) hours at his established rate.

**EMPLOYEES' STATEMENT OF FACTS:** The carrier contracted with Davidson Brothers (a division of the A.A.R. Company), 2756 Scott Blvd., Santa Clara, California, to perform certain hereinafter referred to sheet metal workers' work on S.P. Car 10606 Automat Car. This work was actually performed July 25, 1963.

The work in dispute was:

The applying of water-proofing caulking compound, the cutting, fitting and applying of metal molding strips to three sides of the surface of the bar top in service bar area for the purpose of securing a water-tight bar top. A metal sink is installed in this automat car and has a drain board about two feet long on each side of the sink. This drain board is covered with a bar top formica covering. Through constant use, this formica bar top became loose,—allowing water to get under it and it became necessary to remove

less, and thereafter at the overtime rate up to the starting time of their regular work period, and will be required to do only such work as originally called for, or other emergency work which may have developed after they were called, which cannot be performed by the regular force in time to avoid delays to train movement.

(b) Employees required to report for work, who report and begin work not more than one (1) hour in advance of their regular working hours, will be paid at the rate of time and one-half up to the starting time of their regular work period with a minimum allowance of one (1) hour."

Since the claimant was neither called, entitled to be called, or required to meet the provisions of Rules 10 and 11, supra, claimant is not entitled to the additional compensation claim under those rules.

As additional support of carrier's position in this case, attention is directed to the principles controlling in this board's awards Nos. 2186, 2475, 2530, 2803, 2823, 2883, 3133, 3276 and 3433, Third Division Award No. 10600, and Fourth Division Award No. 1659.

It is a principle too well established by all divisions of this board to warrant citation that the burden of proving a disputed contention rests upon the party who relies upon it to maintain its position. This the petitioner has failed to do, and consistent with those Awards, the instant claim must fail.

#### CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and requests that it 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 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 waived right of appearance at hearing thereon.

It appears that the work involved here was regluing a formica top to a plywood counter base. Such work is not comprehended by Rule 77.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1965.

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