Award No. 6063
Docket No. MW-6042

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the agreement when it assigned the work of dismantling a furnace and the installation of a new furnace at the freight house in Cedar Rapids, Iowa, to the Puth Plumbing Company;

(2) That Water Service Repairmen B. E. Eakin, G. L. Fischer, Otto Knode, Carl Herman and J. G. Camwell be allowed pay at their respective straight time rates for an equal proportionate share of the total man-hours consumed by the employes of the Puth Plumbing Company in performing the work referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: A new oil burning furnace was installed at the Carrier's freight house in Cedar Rapids, Iowa during the month of September, 1950.

The work of dismantling and removing the old furnace, installing the new furnace and installing the fuel oil storage tank together with all necessary piping and other incidental work was assigned to and performed by two employes of the Puth Plumbing Company, Cedar Rapids, Iowa, who hold no seniority under the effective agreement. Approximately sixty-four (64) man-hours were consumed by the contractor's employes in the performance of this work.

The Carrier made no effort or attempt to negotiate with the Employes relative to the contracting of the instant work and the Employes were not aware of the Carrier's action until some time after the old furnace had been dismantled and removed.

Claim was filed in behalf of the Water Service employes on the Cedar Rapids Division for pay at their respective straight time rates of pay for an equal proportionate share of the total man-hours consumed by the Contractor's employes during the time they were engaged in performing the work referred to above.

Carrier declined claim.

By no stretch of language can it be claimed that this phrase comprehends that a furnace is an appurtenance of a pipe.

Webster's New International Dictionary defines appurtenance as:

> "Appurtenance—(1) That which belongs to something else; adjunt; appendage; an accessory; **something annexed to another thing more worthy.**" (Emphasis added.)

The major and primary task to be accomplished at the Cedar Rapids freight house was the installation of a new heating plant. The dismantling of the old furnace and the necessary pipe work in installing the new unit were incidental or subsidiary work in connection with the primary task.

In recognition of the fact that the primary job was the installation of the new boiler and that the connecting to existing steam heat lines, the electrical work and the dismantling of the old furnace are conditions arising from the primary job; the Board's attention is directed to Award 5304. Here the Board states:

> "The work contracted out is to be considered as a whole and may not be subdivided for the purpose of determining whether some parts were within the capacity of the Carrier's forces (Awards 3206, 4776 and 4954)."

From the nature of the work involved in the installation of a heating plant, it's very clear that the services of specialists are required. The equipment installed, such as the burner, the automatic controls, and the draft regulator, indicates they are not dependent upon an employe whose duties are confined to pipes or to the repair and maintenance of pumps and motor cars. **The employes only claim to this work is approached because the work entailed a small amount of pipe work.**

Nowhere in the description of Group 3 can there be found any reference to boilers or furnaces and the employes can cite no Rule which does contain such reference.

The record shows that all of the claimants involved were actually working, and paid their regular earnings on the dates in question. They, therefore, lost no earnings from their regular assignments. There is no Rule allowing pay for time not worked. A penalty, if any, cannot be by implication.

In view of the foregoing, the Carrier respectfully petitions the Board to deny the claim.

It is hereby affirmed that all data herein contained is known to the employes' representative and is hereby made a part of this dispute.

OPINION OF BOARD: This claim is made for five water service repairmen. It is based on the contention that the work of dismantling a hand fired coal burning furnace and installing a new automatic oil burning steam furnace in place thereof in carrier's freight house at Cedar Rapids, Iowa, which work was contracted to and performed by the Puth Plumbing Company, was in violation of the scope of the agreement covering their employment with the carrier. Each of the claimants is asking that he be paid, at straight time rate, for an equal proportionate share of the hours consumed by the employes of the Puth Plumbing Company in performing the work. The work was performed during the period between September 5 and 14, 1950, both dates included.

Generally speaking a carrier may not contract out work embraced within the scope of its collective agreements. There are recognized exceptions to this general rule which include instances when the work requires such special skills or special equipment that the carrier cannot ordinarily be expected to

have them. However, we do not think the work of installing an automatic oil burning furnace, or the tools needed for that purpose, fall within this exception. In fact, the record establishes that Carrier's employes are capable of doing it.

The rules of the parties' effective agreement which relate to scope provide, insofar as here material, as follows:

> "Rule 1. Scope. These rules will govern the hours of service and working conditions of all employes . . ., performing work of a maintenance and construction character in the Maintenance of Way Department . . .
>
> "Group 3. Water Service.
>
> "(b) Water Service Mechanics. Mechanics whose work shall consist of the following: The installing, dismantling and maintaining all pipe work and appurtenances thereto (above and below ground), . . . used for the purpose of conveying water, steam, . . . oil . . . This at all . . . freight houses, . . .:
>
> "They will be considered composite mechanics as their work covers all classes of mechanical work."

An appurtenance is something incident to the chief or principal thing, that is, something which is an appendage or adjunct thereto. Here the furnace was not an appurtenance to the pipes which were necessary to a complete installation thereof but rather the pipes were appurtenances to the furnace. We do not find the work involved is covered by what is specifically referred to as work of water service mechanics.

However, the general language of the scope rule embraces all work which employes therein included usually and customarily performed at the time of the negotiation and execution thereof. In this regard water service mechanics' duties cover all classes of mechanical work in their field. This, the evidence shows, includes the dismantling and installation of furnaces. Whether water service repairmen did or did not have the exclusive right to perform it is a matter of fact and, if the carrier claims they did not, then the burden of showing they did not would rest upon it.

Carrier offered proof as to what transpired in this regard between 1945 and 1951, both years included, but offered no evidence of what the practice was on and before May 1, 1938, the effective date of the parties' agreement containing the scope rule under which relief is here sought. In the absence of such showing we must assume these employes had the exclusive right thereto.

In order that there may be no misunderstanding as to the effect of this award we point out that it is based solely on the record before us. It may be that on and before the present scope rule was agreed upon and entered into that the practice on this carrier as to this class of work would show these employes did not have the exclusive right thereto. That question we do not hereby foreclose if it arises in connection with other claims on this carrier of a like nature.

Carrier contends that the claim should be disallowed because none of the claimants lost any time as a result of this company doing the work. This claim is primarily to enforce the scope of the agreement and not for work performed. If the scope has been violated then a penalty is imposed to the extent of the work lost. This is done to maintain the integrity of the agreement. As to who gets the penalty, that is but an incident to the claim itself and not a matter in which the carrier is concerned for if the agreement is violated, it must pay the penalty therefor in any event.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1953.