

Award No. 1803

Docket No. 1672

2-NC&StL-SM-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 83, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

DISPUTE: CLAIM OF EMPLOYEES: (1) That the current agreements were violated when the Carrier on and subsequent to July 21, 1952 assigned the repairing of the heating system at the Union Passenger Station to contractors, which thereby damaged employes of the Sheet Metal Workers' craft, subject to the terms of said agreements.

(2) That accordingly the Carrier for the aforesaid work performed in the amount of 810 hours by the employes of the contractors be ordered to:

- (a) Additionally compensate Sheet Metal Worker T. E. Johnson in the amount of 407 hours at the time and one-half rate.
- (b) Additionally compensate Sheet Metal Worker Helper R. E. Jenkins in the amount of 403 hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: At Atlanta, Georgia, the carrier installed a heating system at the Union Station during 1929 and 1930. The maintenance of this heating system, particularly the steam and water pipe repairing and all other work recognized as sheet metal workers' work has been exclusively performed by employes of the sheet metal workers' craft since November 25, 1946 until on or about July 21, 1952.

The carrier made the election to unilaterally contract out the repairing of this Union Station heating plant or system and beginning on July 21, 1952 a mechanic and an apprentice of the contractor commenced changing pipes and renewing pipes; removing and applying steam heat regulating valves, removing, repairing and replacing drain pipes to steam radiators, including other incidental repairs thereto and the insulation of the steam plant piping. These employes worked on the job from 8:00 A. M. to 4:30 P. M., with a lunch period of thirty minutes, Mondays through Fridays, and for their services the mechanic and the apprentice were each paid for 407 hours and 403 hours respectively.

During the period that the above work was performed, the total force of employes of the sheet metal workers' craft employed and furloughed by the carrier at Atlanta, Georgia, follows:

Employed	Furloughed
1 Sheet Metal Worker	4 Sheet Metal Workers
1 Sheet Metal Worker Helper	4 Sheet Metal Worker Helpers

These employes when they were all in the service just previous to the inception of this dispute were employed on all three shifts, from 7:00 A. M. to 3:00 P. M., 3:00 P. M. to 11:00 P. M., 11:00 P. M. to 7:00 A. M.

The memorandum agreement of November 25, 1946 and the agreement effective September 1, 1949 are controlling.

POSITION OF EMPLOYES: It is respectfully submitted, on the basis of the foregoing statement of facts and the rules of the agreements applicable to them, that the carrier did damage the employes of the sheet metal workers' craft, as claimed. These employes were also damaged in violation of the carrier's contractual obligation to them, and in support thereof, attention is called to provisions of these aforesaid agreements, which for ready reference follow:

First: The memorandum agreement of November 25, 1946, in applicable part reads:

"Atlanta Union Station and Coach Yard Comprising the territory from Forsythe Street to Foundry Street;

Work belonging to the Sheet Metal Workers:

All water lines, (except the water line from the meter at Forsythe Street to tank at Foundry Street), at the Union Station, including lines to the tracks connecting to the water boxes and including water boxes, water lines to the Coach Yard, mechanical service building, Pullman Mechanical service buildings, meat and automobile platforms, northbound Freight Transfer platform: All steam pipe work, including heating system in all buildings, i.e., main station buildings, mail and baggage rooms, express office, Union News Company room, telegraph office, Station Master's office, Police Office, Enginemen and Trainmen's wash rooms, Chief Joint Interchange office, NC&StL and Pullman Mechanical service buildings, meat and auto platforms, northbound freight transfer, and all steam lines to the Coach Yard and station tracks. All air lines in this territory. Steam heat work in the freight house, provided it is not done by the S. A. L. Railway and NC&StL employees are called on to do it." (Emphasis supplied).

Second: Rule 98 captioned "Classification of Work" of the agreement effective September 1, 1949 in applicable part reads:

"Sheet Metal workers' work shall consist of . . . the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam pipes; . . . and all other work generally recognized as sheet metal workers' work."

Third: These involved damaged employes have prior rights to the work specified in the above quotations over non-employes or the employes of the contractor for the reasons stipulated on page 1 of the September 1, 1949 agreement reading:

"It is understood that this agreement shall only apply to those N. C. & St. L. Employees who perform the work specified in this

agreement in the Maintenance of Equipment Department, **plus that which under present practices** of the Railway is being done by employes of this Department." (Emphasis supplied.)

when it is read together with that part of Rule 24 captioned "Seniority" thereof which reads:

"Seniority of employees in each craft covered by this agreement **shall be confined to the point employed** in the Maintenance of Equipment Department." (Emphasis supplied.)

Fourth: That part of Rule 26 captioned "Assignment of Work" in the September 1, 1949 agreement reading:

"None but mechanics or apprentices **regularly employed as such** shall do mechanics' work, except that helpers may assist mechanics and apprentices in performing their work, **as per special rules of each craft.**" (Emphasis supplied.)

is subject to be read together with the foregoing quoted agreement provisions. When this is done, it then becomes self-evident and indisputable that the employes of the contractor were not "regularly employed" by the carrier to perform any work of a mechanic or of an apprentice on the heating plant at the Union Station and neither did they have any seniority rights to any employment with the carrier under the above quoted Rule 24 of the controlling agreement of September 1, 1949. Finally, for the reasons hereinbefore stated, the statement of dispute is subject to be sustained in its entirety and the Honorable Members of this Division are respectfully requested to do so.

CARRIER'S STATEMENT OF FACTS: The dispute in the instant case involves the renovation and modernization of the heating system in carrier's Union Passenger Station, Atlanta, Georgia.

The passenger station as well as the heating system therein, was designed by McDonald and Company, Atlanta, Georgia, and constructed by contract during 1929 and 1930. This structure is located over and about 28 feet above the tracks of the railway, supported by steel columns. It is therefore fully exposed to the natural temperature elements.

The heating system is supplied by overhead steam mains to cast iron radiators and complex unit heaters encased and concealed in walls from which heated air is furnished each of the rooms in the passenger station. The return condensation is piped to a central location where it is wasted. Steam for high pressure coach and yard heating as well as for low pressure passenger station heating is purchased from and supplied by Georgia Power Company, wherefrom it is piped to the passenger station at a pressure of about 100 psi, where the steam pressure is reduced by a pressure reducing station to about 5 psi for heating the passenger station.

The general waiting room is about 40' x 96' x 30' high. The colored waiting room is about 39' x 39' x 18' high. The waiting rooms are heated by unit heaters, located in walls, controlled by valves and traps. Air flows through inlet grills located from 2 feet to 6 feet above floor level in the room and is circulated around unit heaters by electric motor driven fans located in plenum ducts where it is heated and emitted through outlet grills located from 8 feet to 14 feet above the floor level. This heating arrangement presents a real difficulty in maintaining warm air near the floor level.

Hot air is conveyed to other rooms by means of metal ducts through which the heated air is forced by electric motor driven fans and exhausted through outlet grills from 8 feet to 10 feet above the floor level. This presents the same difficulty referred to above.

The floors of the passenger station are composed of concrete and terrazzo about 6 inches thick and as stated above are exposed to outside temperatures on account of the open area underneath.

During the winter of 1951-52 it developed that the heating system was incapable of providing proper temperature in the waiting rooms of the passenger station and numerous complaints were received from patrons on this account. An inspection of the heating system showed that it was in such condition that considerable engineering and work was necessary to be performed by some one capable of diagnosing causes of ineffective heating and to make appropriate additions and changes.

The specialized heating system in the Atlanta Union Station is the only one of its kind in service on carrier's property. The only other comparable passenger terminal station on carrier's line of railroad, in which the heating system is maintained by carrier's employes, is located at Chattanooga, Tennessee.

The heating system in the Chattanooga Passenger Station is of the simplest type, composed of cast iron direct radiators located on the floor in each of the rooms of the passenger station, steam for heating the cast iron radiators is secured from and returned to two 125 H.P. return tubular boilers. There are no indirect heaters in which fans, electric motors, etc., are involved and the Chattanooga heating system is in no way comparable to the system in the Atlanta Union Station. Maintenance work on the Chattanooga system is done by carrier's maintenance of way employes.

Carrier did not have among its engineers, supervisors and employes anyone with up to date experience in the type of engineering involved who was qualified to diagnose the causes of failure of the heating system to maintain the desired temperature in the passenger station, and to make recommendations as to needed changes in the heating system; nor did it have employes with necessary training, experience and up-to-date knowledge capable of performing the work involved in the renovating of the heating system in accordance with the requirements of the Atlanta building codes.

As previously stated by carrier the heating system in the Atlanta Union Station was installed by contractor and is the only one of its kind subject to carrier's control, supervision and maintenance, for which reasons the expense of including on its staff an engineer or employe specialized in designing, modernizing or renovating a heating system such as here involved, was not justified by carrier according to its considered judgment.

Carrier herewith submits as its Exhibit A statement of Mr. J. C. Aker, chief engineer, attesting to these facts.

The work customarily performed by employes of the sheet metal workers' craft on this railway, relating to heating, is confined to the installation and repairs to heating systems on engines, passenger equipment and shop buildings, all of which is of the simple type generally found on all railroads, and it is this type of heating work to which the experience of the employes of that craft has been confined on this railway.

Although carrier had utilized its employes of the sheet metal workers' craft in the past from time to time to make minor repairs to the heating system, they were not capable of performing but a small portion of the work that was involved in the overall job of renovating and modernizing the heating system. The work involved in the overall job of renovating and modernizing the heating system in the Atlanta Union Station was considerably more intricate and required experience and skill which carrier's sheet metal workers did not possess due to their lack of training or experience in connection with the type of heating system here involved.

Carrier herewith submits as its Exhibit B statement of Mr. R. W. Hardin, general foreman of the mechanical forces, Hills Park (Atlanta), attesting to these facts.

For the reasons above stated, carrier engaged a specialized heating contractor of national repute to inspect the heating system and component units, recommend and install necessary modern and specialized repair parts, controls and filter system.

Affidavit of Messrs. W. S. Miller and E. K. Jamison of Huffman-Wolfe Southern Corporation, contractors who performed the renovation and modernization of the Union Station heating system, herewith submitted as carrier's Exhibit C, attests to the engineering problems the project involved, the nature of the work performed and the necessity of mechanics experienced in the type of heating installation involved and capable of performing the work in accordance with the local and State building codes and laws; and also the fact that it would not have been possible for carrier's forces to have supplemented the contractor's forces unless carrier's employes were members of the A. F. of L. Building Trades Council.

The contractor started the job of renovating and modernizing the heating system on June 27 and completed same September 17, 1952, its force consisting of electricians, sheet metal workers, steam fitters, apprentice, steam fitter helpers and a welder.

During the period of time involved claimants were regularly assigned as sheet metal worker and sheet metal worker helper, respectively, at carrier's Hills Park Shop which is located approximately 4½ miles north of Atlanta Union Station. No employes of the sheet metal workers' craft were assigned at the Union Passenger Station.

The contractor's forces worked Monday through Friday, their regular working hours being 8:00 A. M. to 4:30 P. M., no work being performed on an overtime basis. Claimants' assigned hours were 7:00 A. M. to 3:30 P. M., Monday through Friday.

On December 1, 1952 the general chairman of the Sheet Metal Workers progressed claim in behalf of Claimant T. E. Johnson for 407 hours and Claimant R. E. Jenkins for 403 hours, at time and one-half rate, account carrier contracting pipe work at the Union Passenger Station, dating the claim from July 21, 1952.

As the contractor completed its work on September 17, 1952, the period of time involved in the instant claim includes July 21 to September 17, 1952.

A check of the contractor's payroll shows that during the period involved the contractor's sheet metal workers, steam fitters and steam fitter helpers worked as follows:

WEEK ENDING	SHEET METAL WORKERS	STEAM FITTER	STEAM FITTER HLPR.
7-23	4 hours	24 hours	24 hours
7-30	8 "	40 "	40 "
8-6		40 "	40 "
8-13		40 "	40 "
8-20		40 "	40 "
8-27		40 "	40 "
9-3		32 "	32 "
9-10		27 "	36 "
9-17 (2 emp)	24 " 24 "	36 "	32 "
	60 hours	319 hours	324 hours
Total—379 hours—Sheet Metal Worker—Steam Fitter			
324 hours—Steam Fitter Helper			

A check of carrier's payroll records shows that on each of the dates worked by contractor's sheet metal workers and pipe fitters, during the period involved, claimants received payment for the time of their regular assignment and in addition on some days overtime payment and payment for calls. Irrespective of this fact the employes contend Claimant T. E. Johnson should be additionally paid in the amount of 407 hours at time and one-half rate and Claimant R. E. Jenkins in the amount of 403 hours at time and one-half rate, for time not worked.

POSITION OF CARRIER:

Propriety of Carrier contracting the job of renovating and modernizing the heating system in the Union Passenger Station.

Air conditioning, ventilation and heating systems in buildings is a trade in itself and such installations as the specialized heating system in carrier's Atlanta Union Station are not common to the railroad industry for which reason carrier's engineers, supervisors and mechanics are not trained and experienced in the making of such specialized installations. As previously stated by carrier, the heating plant in the passenger station here involved was installed by contractor's forces.

The affidavit of Messrs. Miller and Jamison of Huffman-Wolfe Company (carrier's Exhibit C), evidences the fact that diagnosing the cause of the trouble experienced and determining what changes and improvements were necessary to insure maintenance of proper temperature in the passenger station, required the services of an engineer experienced in that type of engineering. Their affidavit also evidences the fact that the work involved in the renovating and modernization of the heating system required supervision and mechanics experienced in the type of work involved; also personnel carrying proficiency examination cards as journeymen mechanics issued through and required by local authorities and/or duly registered non-manual personnel under State Professional Engineering License.

Affidavits of Messrs. Aker and Hardin, (carrier's Exhibits A and B), attest to the fact that carrier did not have qualified engineers, supervisors or mechanics to have attempted the overall job with its own employes.

Carrier therefore submits that the evidence produced conclusively shows that the work involved required special skills and was unusual or novel in character insofar as the experience of carrier's supervisors and workmen was concerned.

The propriety of contracting out work when special skills, equipment or materials are required, or when the work is unusual or novel in character or involves a considerable undertaking, has been recognized in numerous awards. See Third Division Awards 2338, 2465, 3206, 4712, 5028, 5151, 5304.

The following is quoted from the Opinion of Board in Third Division Award 4712:

" . . . General familiarity with the theory or phases of it, which some or all of the signal employees undoubtedly had, is helpful but not enough to guarantee assured practical commercial installation and operation of a coordinated system with which they had no previous experience. Apparently it was such assured experience that the Carrier sought when it contracted with the manufacturer to make the installation at his own risk."

While the project involved a small amount of steam pipe work which carrier's sheet metal workers could possibly have performed, the over-all project required the exercise of knowledge and experience not possessed by carrier's sheet metal workers.

It has been held in numerous awards that work contracted out is to be considered as a whole and may not be subdivided for the purpose of determining whether some of it could be performed by employes of the carrier. See Third Division Awards 3206, 4753, 4776, 4954, 5304, 5521, 5563.

In Third Division Award 3206 the Board held in part as follows:

“ . . . While it is asserted that the air compressor operator could have done the work performed by the contractor's air-compressor man, we think that it would be rather difficult to divide the project into the small component parts; that the contract as a whole being outside the scope of the agreement, it would neither be expedient nor wise to place small obstacles in the path of management and thus limit its discretion and judgment and cause friction and discord and perhaps the failure of the entire project.”

As pointed out by the affidavit of carrier's chief engineer, J. C. Aker (carrier's Exhibit A), this particular heating system was not constructed by carrier; was never renovated by carrier; was different to any other on its system that was maintained by carrier; needed to be over-hauled or renovated for the coming winter; was novel and unique to this carrier, which is a small railroad; needed expert engineering, supervision and workmanship (which carrier did not possess) to diagnose, recommend, supervise and perform the work necessary to make the peculiar heating system function properly.

Time was of essence since another winter was not too far away. Carrier could not expect to carry on its staff trained experts or trained employes in readiness for the mere overhauling of this unique heating system which was the only one of its kind on its system that was maintained by carrier—such expense could not be reasonably justified.

In such circumstances carrier was faced with decision (1) as to whether it would undertake the over-all job of guessing at the trouble, speculating as to the remedy, experimenting as to the other work and blindly trusting in the results with no guaranteed assurance of success, or (2) as to whether carrier would contract the work—with its accompanying risks—to a responsible contractor with its skilled engineers and workmen guaranteeing a satisfactory job and saving harmless carrier against liability for injury to person or property arising from operations under the contract, thereby transferring the risk to an experienced, responsible contractor agreeing to comply with all laws applicable to the operation.

Faced with these alternatives carrier concluded that it was not only an act of prudence and good judgment to contract the job, but that it was necessary to do so.

Carrier insists that employes' position as to the claim here pressed is not only not in accord with the contract relied upon but does violence to the intent of the contracting parties and to the spirit of the contract.

The awards already cited herein, as well as general contract law, are to the effect that contracts should be given a reasonable interpretation. The general principle of contract law is stated in 12 Am. Jur., Section 250, at pages 791-792 as follows:

“Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them, if an intention can be ascertained from their language . . .”

“ . . . A reasonable interpretation will be preferred to one which is unreasonable . . .”

Carrier insists that reasonable and common sense interpretation of the agreement here involved does not support employes' claim. To hold otherwise means (1) that carrier contracted away its right to exercise its judgment as to the qualifications of its officials and employes to perform a particular job, even though such job be one that is novel and unique in its experience and the only one of its kind on its entire system that is under its jurisdiction; (2) contracted away the right to exercise its judgment and prudence in contracting an over-all job such as here involved to an efficient and experienced contractor even though carrier is satisfied that it (carrier) did not have officials or employes qualified by training and experience to perform the undertaking in an efficient and satisfactory manner, thereby depriving carrier of the right to transfer the risk to a contractor qualified in all respects to diagnose the trouble, remodel and renovate the heating system in a satisfactory manner so as to insure comfort to carrier's patrons in the future; (3) contracted away the right to have the work performed on a regular straight time basis and obligated itself to undertake the work on its own by untrained and inexperienced engineers, supervisors and employes for this particular specialized type job and even at overtime rates of pay (time and one-half) for the entire work carrier's employes claim belonged to them (but work they did not perform) when the work was actually performed by contractor's employes on a straight time basis; (4) contracted away its right to contract an over-all renovating job of this unique type to specialists in this line, if only some small part of the work could have been performed by carrier's employes.

Carrier earnestly insists that such interpretation of the agreement as claimed by employes in the case here submitted would do violence to the intention of the parties at the time the agreement was entered into and that a reasonable interpretation of the agreement is on the side of the insistence of carrier.

Basis of Employes' request that Claimants be additionally compensated.

The instant claim is based on the contention that carrier in contracting the renovating and modernizing of the heating system, **damaged** employes of the sheet metal workers' craft.

Carrier submits there is no basis for the employes' claim that the craft of sheet metal workers was damaged in view of the propriety of contracting the work in question.

The specific members of the sheet metal workers' craft named in the claim both held regular assignments during the period of time involved.

As the claimants lost no compensation provided by their regular assignments on the days which contractor's employes performed pipe work which it is alleged claimants were entitled to perform, plus the fact the hours of claimants' assignments were practically the same as the hours worked by the contractor's employes, the claim of the employes that claimants are entitled to be additionally paid on an overtime basis is necessarily based on the contention that claimants should have been permitted to work in connection with the renovating of the heating system after working their regular assignments and possibly on Saturdays and Sundays, their assigned rest days, on an overtime basis.

Obviously it would not have been practicable for the claimants to perform what pipe work they may have been capable of performing in connection with the heating plant project on an overtime basis at a time when the contractor's force was not at work.

Furthermore, it would be absurd to contend that in view of the fact that claimants were regularly assigned to work 7:00 A. M. to 3:30 P. M., the contractor's force should have been required to change their working

hours from 8:00 A. M. to 4:30 P. M. to a time which would have enabled claimants to work both their regular assignment and then work on the heating system job.

In view of the foregoing it is obvious that there is no basis for the contention that claimants were damaged or that they are entitled to the additional compensation requested.

* * * * *

In conclusion carrier submits:

(1) That in view of the intricacies involved in the over-all job of renovating and modernizing the heating system at the Union Passenger Station, coupled with the fact that carrier did not have the necessary qualified personnel to perform the work with its own forces, carrier's action in contracting the work out was not violative of the current agreements and its action is supported by the awards heretofore cited.

(2) In view of the propriety of the project in question being contracted out, there is no basis for the contention that employes of the sheet metal workers' craft were damaged.

(3) As claimants were regularly assigned during the period of time involved and received the compensation provided by their regular assignment on each day involved in the claim, coupled with the fact that it would not have been feasible for claimants to have worked both their regular assignment and also on the heating system, there is no basis for any contention that claimants were damaged or entitled to the additional compensation requested.

In view of the foregoing facts there is no basis for the instant claim and same 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 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.

The parties to said dispute were given due notice of hearing thereon.

On or about July 21, 1952, carrier contracted with an independent contractor for the repair of the Union Station heating plant at Atlanta, Georgia. The organization contends that the work belonged to them under a Memorandum Agreement entered into on November 25, 1946, whereby certain work at the Atlanta Union Station and Coach Yard was given to the sheet metal workers. The work was described in the Memorandum Agreement as follows:

"All water lines, (except the water lines from the meter at Forsyth Street to tank at Foundry Street,) at the Union Station, including lines to the tracks connecting to the water boxes and including water boxes, water lines to the Coach Yard, mechanical service building, Pullman mechanical service buildings, meat and automobile platforms, northbound Freight Transfer platform, all steam pipe work, including heating system in all buildings, i. e., main station buildings, mail and baggage rooms, express office, Union News Company room, telegraph office, Station Master's office, Police office, Enginemen and Trainmen's washrooms, Chief Joint Inter-

change office, N. C. & St. L. and Pullman Mechanical service buildings, meat and auto platforms, northbound freight transfer, and all steam lines to the coach yard and station tracks. All air lines in this territory. Steam heat work in the freight house, provided it is not done by the S. A. L. Railway and N. C. & St. L. employees are called on to do it."

The only question to be determined is whether or not the carrier had the right to contract the work to an independent contractor under the circumstances and conditions disclosed by the record.

The record shows that carrier's passenger station at Atlanta was constructed in 1929-1930 by an independent contractor. The heating system was a part of the construction job. Maintenance and repair work on the heating system was performed by carrier's employes until the program here complained of was undertaken. In the winter of 1951-1952, the heating plant performed unsatisfactorily and carrier contracted with an independent contractor to put it in good condition. The organization contends that the work was a repair job involving no special skills or equipment to perform it. Carrier's position is that it was necessary to diagnose the cause of the heating plant failure, redesign it to meet present needs, and remodel and modernize it to assure a proper functioning of the plant. It contends that its employes did not have the skill to do the work and that it was necessary to contract the work to an independent contractor specially skilled in this type of work. It urges further that as the heating plant was originally constructed by an independent contractor, the redesigning and modernization of the plant could likewise be contracted.

Carrier states that the Atlanta passenger station heating system is the only one of its kind on its railroad. It is described as a split system combining the use of steam and electric motor driven fans. It is supplied with overhead steam to cast iron radiators and unit heaters concealed in the walls from which heated air is furnished to each of the rooms in the station. The waiting rooms are heated by unit heaters in the walls which are controlled by valves and traps. The air is circulated around the unit heater by the use of electric fans.

The contractor's engineers found that the heating transfer coils were inefficient, electric motors were operating at reduced speeds, heating outlets were not properly functioning, filters were not installed, automatic controls were needed, and the pressure reducing station was in bad condition. It was necessary to use electricians, sheet metal workers, steamfitters and a welder to do the work. We point out at this point that the organization does not contend that all the work performed was sheet metal workers' work.

It is the general rule, we think, that management may farm out work when the evidence is sufficient to warrant the exercise of managerial judgment as to whether carrier has the men, equipment and facilities to perform the work within a reasonable time under all the circumstances of the case. It having contracted work to employes of a particular craft it will not be permitted to farm it out except when the facts and circumstances show that it was not reasonably contemplated that such work was included within the terms of the agreement. The decision of such a dispute rests largely upon the facts and circumstances of each case and the determination of whether or not the carrier had any reasonable basis for contracting the work after giving consideration to the schedule agreement. See Award 2338, Third Division.

In this case the carrier takes the position that the heating plant at the Atlanta passenger station was unique, complicated, intricate and of such a character that its officers and employes lacked the qualifications and experience to overhaul it. We call attention to the fact that this is contrary to

the position taken by the carrier when it contracted "all steam pipe work, including heating system in all buildings, i. e., main station buildings . . ." at the Atlanta Union Station to the sheet metal workers. It would seem that the carrier had no fears as to the qualifications of its employes to do this particular work when the Memorandum Agreement was made.

It is argued, however, that carrier lacked heating engineers and supervisory officers who had the ability to diagnose the trouble and supervise the repairs to be made. From this it is contended that the carrier was not obligated to split up the work and could properly farm out the whole of it. This is the general rule. Award 3206, Third Division, points up this principle. It seems clear from the record before us that the carrier was lacking in competent engineers and supervisors only. These could have been obtained. We have searched this record diligently in an attempt to find any work that carrier's craft employes could not have performed. We found none. It seems clear to us that if carrier had provided competent engineers and supervisors, all of the craft work, including that of sheet metal workers, could have been done by them. We do not think the holdings of the awards of this Board that carrier need not divide a project applies as between professional engineers and supervisors on the one side and craft employes on the other. If plans and specifications for the work to be done had been provided, together with supervisors capable of overseeing the work, the work could have been done by carrier's employes. There is no evidence in this record that employes of the carrier did not have the skill, equipment or facilities to perform the work of repairing and overhauling the heating plant in the Atlanta passenger station. Employes may not be deprived of work contracted to them because of a want of competent personnel in the engineering and supervisory departments. We conclude, under the record before us, that the work of the sheet metal workers was contracted in violation of the current agreement.

Carrier insists that it has the managerial right to determine when or where it may not farm out work. We agree with this statement when the evidence is sufficient to sustain the exercise of such judgment. But when, as here, the record does not disclose that craft employes could not do all the craft work involved with the equipment and facilities at hand, the basis for the exercise of managerial judgment does not exist. Craft employes may not be deprived of work contracted to them solely because carrier fails to provide trained men or competent supervisors to make expert determinations and decide upon the corrective measures to be taken.

The record shows that claimants were working on regular assignments during the time the work was done. From this it is argued that they suffered no damage. If this be so, the carrier by reducing forces or refusing to employ an adequate number of employes could circumvent the agreement with impunity. It is the function of the organization to police the agreement and protect the contract rights of the employes it represents. When work is lost to the craft, a recovery for such lost work may be had. It may be that the claimants named would have been required to work overtime if the work had been given them or that, as here contended, they could not have performed it at all if they worked their regular assignments. But this does not excuse the contract violation. It is the carrier and not the organization that has the means to marshal its forces to avoid such contingencies. There can be only one recovery for the breach and it may not be defeated because carrier kept its employes working on other work during the time the contracted work was performed.

The hours claimed are not sustained by the record. It appears that there were 379 hours of sheet metal and steam fitter's work and 324 hours of steam fitter helper's work. The claim is valid to this extent.

Claimants are not entitled to the time and one-half rate. The value of work lost is the pro rata rate. It is sustained on that basis.

AWARD

Claim sustained per opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1954.

DISSENT OF CARRIER MEMBERS TO AWARD 1803

The majority states that:

"It seems clear from the record before us that the carrier was lacking in competent engineers and supervisors only. These could have been obtained. We have searched this record diligently in an attempt to find any work that carrier's craft employes could not have performed. We found none. It seems clear to us that if carrier had provided competent engineers and supervisors, all of the craft work, including that of sheet metal workers, could have been done by them."

By such reasoning in a case such as here, the carrier would be compelled to go to the expense of temporarily employing competent engineers or supervisors to supervise and instruct railroad mechanics in the performance of the work. In other words, the carrier is required to split the work between supervisors and mechanics in order to perpetuate a totally unrealistic monopoly conception of a scope rule.

No evidence was produced to show that the carrier could hire such temporary supervision or that an engineering firm would agree to furnish such supervision unless its mechanics would perform the work. Carrier stated in the record that mechanics' work, other than sheet metal work, was performed by mechanics employed by the contractor and that if it had attempted to use its sheet metal workers on the work complained of here, the employes of the contractors would have refused to work with them; that mechanics employed by the contractors will work only with members of the building trade unions and not with mechanics within the same craft employed by the railroads. This was not denied.

Under this award, a beautiful windfall is granted to two employes who were employed by the carrier during the entire time of the claims and, in addition, on certain days participated in overtime work for which a penalty was paid.

During the hearing before the referee, the representative of the employes recognized the absurdity of this claim by modifying it. He stated that these men were entitled to one hour per day at the overtime rate, because the contracting force worked one hour beyond the normal quitting time of the claimants, and payment for rest days of the two claimants.

These employes were not available for the work involved in the claim, because the carrier used and paid them for work performed under the agreement. They were not damaged, neither did they lose any time. Yet because the majority decides that sheet metal workers were deprived of work, someone should get a gratuity payment for 379 hours of sheet metal and steam fitter's work and 324 hours of steam fitter helper's work.

The agreement makes no provision for paying a penalty in a case of this kind, and by such an award, a new rule is written into the agreement. The divisions of the Adjustment Board have no such power. The carrier is not

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required to pay a penalty unless the penalty is provided for in the agreement. There is no run-around rule or any other rule which by any stretch of the imagination could be deemed to be a penalty rule.

For these reasons, the award is invalid and we dissent.

T. F. Purcell
J. A. Anderson
D. H. Hicks
R. P. Johnson
M. E. Somerlott