

NATIONAL RAILROAD ADJUSTMENT BOARD**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Levi M. Hall when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement other than Sheet Metal Workers were improperly assigned to renew overhead water line between tracks 1 & 2 and 3 & 4 in the Car Department, Hialeah, Florida Shops.

2. That the Carrier be ordered to compensate the following sheet metal workers, ten (10), eight (8) hour days each: S. H. Polk, E. P. Fleming, P. E. Hilliard, V. W. Scott, R. D. Simpson, J. A. Lamanski, R. Brown, L. S. Childress, W. A. Best, L. Skipper, J. J. Mann, R. S. Peacock, F. L. Sloan, L. Thrift, R. L. Fordham, L. A. Pollard, L. B. Sims, and Sheet Metal Workers W. C. Weeks and H. Paxton, five (5), eight (8) hour days each.

EMPLOYES' STATEMENT OF FACTS: The Seaboard Air Line Railroad, hereinafter referred to as the carrier, maintains a running repair shop at Hialeah, Florida where they have employed members of all the shop crafts which includes the following sheet metal workers: S. H. Polk, W. C. Weeks, E. P. Fleming, P. E. Hilliard, V. W. Scott, R. D. Simpson, J. A. Lamanski, R. Brown, L. S. Childress, W. A. Best, L. Skipper, J. J. Mann, R. S. Peacock, F. L. Sloan, L. Thrift, R. L. Fordham, L. A. Pollard, L. B. Sims, H. Paxton, hereinafter referred to as the claimants. Among other facilities, there is an overhead water line running between tracks known as 1 & 2 and 3 & 4 approximately 4000 feet. This line is used for the purpose of supplying drinking water for the passenger cars that are turned and worked in the shop. All of the facilities were originally installed by a contractor as an overall construction of the shop. Since its construction, the sheet metal workers have maintained all of the water lines, having completely renewed one line that runs parallel to the one in question. Prior to the date contractor was assigned to renew the water line, Master Mechanic L. B. Alexander approached General Chairman R. L. Lanier with regards to the contracting of the water

line out due to an alleged emergency account of increase of cars handled through the shop due to a strike on the Florida East Coast Railroad. After investigation by General Chairman Lanier, it was learned that for quite a period of time the water line had been slated for renewal, and that actually there were sufficient sheet metal workers to perform the work if the provisions of the agreement were applied and the man hours lost on rest days were used. Master Mechanic Alexander was so advised.

On March 15, 1963, outside contractor began renewing the water line and completed its installation May 31, 1963, approximately 180 man hour days were required to complete the job.

This dispute was handled on the property in accordance with the agreement by the employes with all carrier officers authorized to handle disputes with the result that the claim was denied at all levels.

The agreement of March 10, 1923 as subsequently amended is controlling.

POSITION OF EMPLOYES: It is submitted Rule 98 of the agreement provides the following:

"Sheet metal workers' work shall consist of tinning, coppersmithing and pipefitting in shops, yards, buildings, on passenger coaches and engines of all kinds; the building, erecting, assembling, installing, dismantling (for repairs only), and maintaining parts made of sheet copper, brass, tin, zinc, white metal, lead, black, planished, pickled and galvanized iron of 10 gauge and lighter (present practice between sheet metal workers and boilermakers to continue relative to gauge of iron), including brazing, soldering, tinning, leading, and babbitting (except car and tender truck journal bearings), the bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil and steam-pipes; the operation of babbitt fires (in connection with sheet metal workers' work); oxy-acetylene, thermit and electric welding on work generally recognized as sheet metal workers' work, and all other work generally recognized as sheet metal workers' work.

In running repairs, other mechanics than sheet metal workers may remove and replace jackets, and connect and disconnect pipes where no repairs are necessary to the jackets or pipes in question."

It will be noted this rule is applicable to all such work covered, therefore, the employes submit that the carrier erred in assigning to contractor the work in question.

Rule 28 of the agreement provides in part:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed * * *"

This rule is plain, the language is unambiguous. The carrier has contracted with its sheet metal workers to have this and all other work covered, to be performed by members of the craft.

When it became evident that a contractor was to perform the work in question, protest was made by the local chairman to the foreman in charge that the provisions of our agreement were being violated. The sheet metal workers had on a previous occasion renewed a water line known as the sump or raw water line that was supported on the same bracket as the treated water line in question and that since the original installation the sheet metal workers had maintained all water lines. Also he advised that the sheet metal workers were available and qualified to install the water line in question.

In addition to the merits of the above claim, it should be sustained for violation of Rule 31-1A which provides the following:

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the carrier as to other similar claims or grievances."

On July 26, 1963 claim was filed in behalf of the claimants and delivered to Assistant Master Mechanic R. L. Harper. The claim was declined by Assistant Master Mechanic W. S. Henderson in letter dated September 13, 1963 for the following reason:

"My investigation of your claim develops that at the time this pipe line was needed there was not sufficient Sheet Metal Workers available at Hialeah to perform the work, which necessitated the company having to have the work performed by an outside contractor. Therefore your claim is respectfully declined."

This letter was delivered to Local Chairman Johnson on September 25, 1963, a period of 61 days from date of original claim.

There was a delay in appealing Assistant Master Mechanic Henderson's decision for reason of sickness and a vacation. Upon returning to his office General Chairman Lanier found letter of denial from Mr. Henderson that had been forwarded to Local Chairman Johnson, and without knowledge of the violation of the carrier in answering the claim, called Master Mechanic Alexander over the phone and requested an extension of time on the claim, for which he was refused. Upon further investigation, it was learned of the violation of rule 31-1A and exchange of letters in connection with the claim was made.

This dispute has been handled with all officers of the carrier designated to handle such disputes including the highest officer of the carrier all of whom have declined to make satisfactory adjustment.

It is the request of the employes that your honorable board sustain the claim of the employes in its entirety.

CARRIER'S STATEMENT OF FACTS: As result of strike of employees on the Florida East Coast Railway on January 23, 1963, which terminated regular train service thereon, arrangements were made for Atlantic Coast Line Railroad passenger trains (which had been operated by and over the Florida East Coast between Jacksonville and Miami) to be regularly operated by and over the Seaboard between Auburndale, Fla. and Miami, using Seaboard facilities and personnel at Miami to also maintain, repair and service Coast Line diesel units and passenger cars. This, coupled with other increase in Seaboard traffic into and out of Miami, necessitated expansion of yard and shop facilities and employment of additional personnel in all crafts, particularly shop crafts.

One of the pressing problems to be solved was the supplying of drinking water to water tanks on passenger cars in Hialeah (Miami) yard during the layover time. This water was supplied from a 50,000 gallon elevated city storage tank through 2½ inch diameter overhead metal pipe lines installed in 1950, which, along with other pipes carrying air, steam, raw water (used for car washing) and electric power lines, were supported on two rows of creosoted poles, one parallel to and between tracks 28 and 29 and one parallel to and between tracks 26 and 27. Total length of both lines was 4,000 feet. The 2½ inch lines had become scaled and corroded due to the nature of the water and with the limited pressure available from the elevated tank, passenger train servicing operations were handicapped. With only Seaboard passenger trains to be serviced, while the operation was slow, the equipment was watered during available time without delays; however, with the addition of the Atlantic Coast Line trains the available servicing time for each car was so reduced that it was impossible for the watering of the cars to be fully taken care of without delays, necessitating corrective action without further postponement. Engineering study developed that what was needed was larger 4 inch cement lined, cast iron, corrosive resistant pipe to replace the 2½ inch wrought iron pipe, with a booster pump to supplement the inadequate pressure furnished by the elevated tank. This was approved by our chief executive officer as a special capital project (not included in regular 1963 Capital Budget), cost \$35,000.

In keeping with past practice on projects of this type and magnitude, the entire project, including electric booster pumping station and replacement of 16 creosoted poles, was contracted by the chief engineer to the successful bidder, The Poole and Kent Company, Mechanical Contractors, Miami, who specialized in such work. The contractor began work immediately on the project and worked continuously thereon until it was completed, except for period from April 16th to April 25th, when all plumbers in Miami were on strike. The Seaboard furnished the pipe, valves and pump and contractor furnished small items such as brackets, gaskets, nipples. The contractor also furnished the necessary crane with riggers, welding and other machines, scaffolding, lumber, concrete, and necessary forces for the entire job, including the replacing of the 16 poles with new creosoted poles, electrical work and carpentry work. Carrier paid the contractor a total of \$19,636.49, which included \$5,688 for electrical work by sub-contractors.

Beginning in the latter part of January 1963 in order to take care of increase in business it was necessary to employ additional personnel, including the shop crafts. It was especially difficult to locate and employ sufficient sheet metal workers and handling was given with their local chairman at Miami and with their general chairman (who was and is also general

chairman on the Atlantic Coast Line Railroad, Florida East Coast Railway, Savannah and Atlanta Railway, Norfolk-Portsmouth Belt Line Railroad and Jacksonville Terminal Company) for assistance in filling our needs. At the time this project was contracted in March 1963, however, there was an actual shortage of sheet metal workers to take care of the necessary maintenance and repair of railroad equipment at Miami, which continued throughout the period worked by the contractor's forces, and during this period it was necessary to work carrier's existing force of sheet metal workers overtime, including rest days, totaling 677 $\frac{2}{3}$ hours. During the first five months of 1963 a total of 61 new employees of the shop crafts were employed at Hialeah (Miami) Shops, including 8 sheet metal workers.

Notwithstanding the known fact there was a shortage of sheet metal workers at this point and the existing force was working overtime, the local chairman of the organization at Miami filed claim in behalf of 19 sheet metal workers on July 26, 1963 (almost 60 days after the job was completed) and below is quoted the complete correspondence exchanged in connection therewith:

LOCAL CHAIRMAN TO ASSISTANT MASTER MECHANIC,
JULY 26, 1963

"In accordance with Rule 31, Section 1(a) of the Agreement between the SEABOARD AIR LINE Railroad Company and the System Federation No. 39 RAILWAY EMPLOYEES DEPARTMENT A. F. of L. dated March 10, 1923, reprinted October, 1961 I'm filing a claim of violation of the Preface of said agreement and of Rules Nos. 28, 29 and 98 of this agreement, whereas I'm claiming time for the Pipefitters of Hialeah Shops (Diesel Shop & Car Dept) for work performed by outside Contractors, POOLE & KENT Contractors of Miami whereas they renewed the overhead Water Line in the Car Department between Tracks 1 & 2 and Tracks 3 & 4 beginning the date of March 15, 1963 and finishing May 31, 1963. Men working for Poole & Kent Contractors between these dates amounted to one hundred-eighty (180) working days for which Time is to be claimed for the following Pipefitters:

1. S. H. Polk	10 days	10. W. A. Best	10 days
*2. W. C. Weeks	5 days	11. L. Skipper	10 days
3. E. P. Fleming	10 days	12. J. J. Mann	10 days
4. P. E. Hilliard	10 days	13. R. S. Peacock	10 days
5. V. W. Scott	10 days	14. F. L. Sloan	10 days
6. R. D. Simpson	10 days	15. L. Thrift	10 days
7. J. A. Lamanski	10 days	16. R. L. Fordham	10 days
8. R. Brown	10 days	17. L. A. Pollard	10 days
9. L. S. Childress	10 days	18. L. B. Sims	10 days
		**19. H. Paxton	5 days

(*) W. C. Weeks admitted to hospital for operation April 22, 1963, returned to work after completion of job.

(**) H. Paxton hired for work and reported April 29, 1963."

ASSISTANT MASTER MECHANIC TO LOCAL CHAIRMAN,
SEPTEMBER 13, 1963

"Acknowledging your letter July 26, 1963 claiming time for Pipefitters of Hialeah Shops (Diesel Shop and Car Department for work performed by outside contractors, Poole and Kent, alleging violation of Rules Nos. 28, 29 and 98 of the agreement due to these outside contractors renewing overhead water line in the Car Department between Tracks 1 and 2 also Tracks 3, 4 beginning March 15, 1963 and completing this work May 31, 1963, time being claimed for the following:

S. H. Polk	10 days	W. A. Best	10 days
*W. C. Weeks	5 days	L. Skipper	10 days
E. P. Fleming	10 days	J. J. Mann	10 days
P. E. Hilliard	10 days	R. S. Peacock	10 days
V. W. Scott	10 days	F. L. Sloan	10 days
R. D. Simpson	10 days	L. Thrift	10 days
J. A. Lamanski	10 days	R. L. Fordham	10 days
R. Brown	10 days	L. A. Pollard	10 days
L. S. Childress	10 days	L. B. Sims	10 days
		**H. Paxton	5 days

*W. C. Weeks admitted to hospital for operation April 22, 1963, returned to work after completion of job.

**H. Paxton hired for work and reported April 29, 1963.

My investigation of your claims develops that at the time this pipe line was needed there was not sufficient Sheet Metal Workers available at Hialeah to perform the work, which necessitated the company having to have the work performed by an outside contractor.

Therefore your claim is respectfully declined."

GENERAL CHAIRMAN TO MASTER MECHANIC,
NOVEMBER 20, 1963

"This letter will acknowledge receipt and is appeal of decision of Mr. W. S. Henderson's, Assistant Master Mechanic, letter dated September 13, addressed to Mr. M. P. Johnson, Local Committee, and delivered in person by Mr. Henderson to Mr. Johnson on September 25th. A lapsed period of sixty one (61) days from date of claim presented in behalf of the Sheet Metal Workers as listed in original claim which was submitted under date of July 26, 1963.

You are respectfully advised that the decision is not accepted by reason of the fact that Mr. Henderson's letter dated September 13th and delivered in person on September 25th is not in compliance with Rule 31 - 1(a) for which I quote:

'All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the

Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.'

In addition to the above and contrary to the last paragraph of Mr. Henderson's letter dated September 13, 1963, there were sufficient Sheet Metal Workers available at Hialeah to have performed the work. As evidence of the fact, each of the eighteen (18) Sheet Metal Workers employed at that point had two rest days each week and all of these men were available on their rest days.

We respectfully request that this claim be allowed as presented. Will you please advise?"

MASTER MECHANIC TO GENERAL CHAIRMAN
DECEMBER 9, 1963

Your letter dated November 20, 1963, appealing to me Assistant Master Mechanic Henderson's declination of your claim in favor of Sheet Metal Workers listed in original claim which was submitted under date of July 26, 1963.

To set the record straight, I will list the facts concerning this claim in a chronological order. Claim was received by former Assistant Master Mechanic R. L. Harper on July 26, 1963 from Sheet Metal Worker Local Chairman M. P. Johnson in behalf of the following sheet metal workers for the number of eight hour days indicated:

S. H. Polk	10 days	W. A. Best	10 days
W. C. Weeks	5 days	L. Skipper	10 days
E. P. Fleming	10 days	J. J. Mann	10 days
P. W. Hilliard	10 days	R. S. Peacock	10 days
V. W. Scott	10 days	F. L. Sloan	10 days
R. D. Simpson	10 days	R. L. Fordham	10 days
J. A. Lamanski	10 days	L. A. Pollard	10 days
R. Brown	10 days	L. B. Sims	10 days
L. S. Childress	10 days	L. Thrift	10 days
		H. Paxton	5 days

Claim was declined by Assistant Master Mechanic W. S. Henderson, who succeeded Assistant Master Mechanic Harper by letter dated September 13, 1963, in keeping with practice of long standing of exchanging correspondence pertaining to claims originating in our Hialeah Shops, the various Local Chairmen and Local Management delivering by hand to each other all such correspondence.

Assistant Master Mechanic Henderson, after writing his letter of September 13, 1963, learned that Local Chairman Johnson was on vacation and would return to work on September 23, 1963. Mr. Henderson personally delivered his letter of declination to Local Chairman Johnson on September 23, 1963, which time was within the 60 day time limit prescribed in Rule 31 of our Shop Craft Agreement.

On November 19, 1963, you called me on the telephone and discussed this claim. Among other things in this discussion, you stated that you had let the deadline for appealing this claim to me slip by you and asked if I would consider accepting your appeal a few days over the 60 day limit. I advised you that I could not comply with such a request because of the firm understanding on this property by both the various organizations and Management that both will be governed by Rule 31. I naturally assumed after our telephone conversation that the issue was closed.

Upon receipt of your letter dated November 20, 1963, to say the least I was dumbfounded at your contention that Assistant Master Mechanic Henderson did not deliver his letter of declination to Local Chairman Johnson until September 25, 1963, a lapse of 61 days from date of original claim. Doesn't it seem odd to you now that if you intended to collect this claim based on our failure to reply to the original claim within the prescribed 60 days that you would have made your claim before now and certainly without calling me on November 19th and requesting me to waive the 60 day time limit.

In view of the above facts I cannot accept your claim as an appeal was not filed within the provisions of Rule 31 of our Shop Craft Agreement. Without prejudice to your position there is absolutely no merit to your claim. You will recall that during the time it became necessary to renew the water line in question in our Hialeah Car Shop I was handling with you soliciting your assistance in locating sufficient Sheet Metal Workers to meet our requirements of repairs to cars as our work load had substantially increased. You and we were unable to obtain sufficient Sheet Metal Workers to meet our requirements and we were having to work excessive overtime. To have undertaken the job of replacing the water lines, evidenced by the number of hours of your claim, would have completely paralyzed our train operation. Your contention that the work of replacing the waterlines could have been accomplished by working the claimants on their rest days is absurd and not in keeping with the purpose and intent of the 40 hour per week contract in effect on this property. In addition the renewal of the pipe line and replacing same with increased diameter pipe is part of an over all expansion program of our shop facilities at Hialeah costing several hundred thousand dollars, all of which Management has the right to contract to outside parties. Such projects, as you know, are normally contracted to outside parties because we do not have the personnel or equipment to perform such projects.

In view of the foregoing the claim in your letter of November 20th is declined."

GENERAL CHAIRMAN TO MASTER MECHANIC,
DECEMBER 26, 1963

"With reference to your letter of December 9, 1963 in which you denied claim in connection with installation of pipe line, Hialeah Shops, I am somewhat confused with regards to the denial of this claim on the grounds it was not appealed and filed within the provisions of Rule 31 of our Agreement. Even though Mr. Henderson dated his denial of the original claim September 13, 1963, you advised it was delivered September 23, 1963 to Local Chairman Johnson, certainly the intent of the rule is not for a letter to be predated by either party regardless of the circumstances involved. Thus by using your alleged date of delivery, it would be our position that the claim was appealed to you within the 60 day time limit prescribed in Rule 31. Notwithstanding the above circumstances, we are not withdrawing our position, that in addition to the merits of the claim it should be paid for violation of Rule 31 of our Agreement.

Please be advised that your decision is being appealed."

GENERAL CHAIRMAN TO CHIEF MECHANICAL OFFICER,
DECEMBER 26, 1963

"On March 15, 1963 outside contractor was assigned to renew overhead water line in car department between tracks 1 and 2 and 3 and 4 at Hialeah Shops. Work was completed on May 31, 1963 and consisted of renewing approximately 3,000 feet of overhead pipe line. There were approximately 47 drops of 1½ inch and 2 inch galvanized pipe along with a number of elbows, tees, cutout valves, reducers and nipples used in the installation of this pipe line. Men working for the contractor consumed 180 working days in the construction of this work. For violation of Rules 28, 29 and 98 of our Agreement, claim was entered in behalf of the following Sheet Metal Workers' for the number of 8 hour days indicated:

S. H. Polk	10 days	W. A. Best	10 days
W. C. Weeks	5 days	L. Skipper	10 days
E. P. Fleming	10 days	J. J. Mann	10 days
P. W. Hilliard	10 days	R. S. Peacock	10 days
V. W. Scott	10 days	F. L. Sloan	10 days
R. D. Simpson	10 days	R. L. Fordham	10 days
J. A. Lamanski	10 days	L. A. Pollard	10 days
R. Brown	10 days	L. B. Sims	10 days
L. S. Childress	10 days	L. Thrift	10 days
		H. Paxton	5 days

This claim was declined by Mr. H. P. Henderson, Assistant Master Mechanic, in letter dated September 13, 1963 for the reason there were not sufficient sheet metal workers available to perform the work. This letter was delivered to Local Chairman Johnson in person on September 25, 1963 by Mr. Henderson, a lapsed period of 61 days from date of the original claim and receipt of denial. The claim was appealed to Mr. L. B. Alexander, Master Mechanic, on November

20th and declined on December 9th for the reason it was not appealed and filed within the provisions of Rule 31 of our Agreement. He also advised Mr. Henderson delivered letter denying original claim on September 23rd which was within the time limit provisions. I am attaching affidavits substantiating the fact that Mr. Henderson delivered his letter of denial dated September 13th to Mr. Johnson on September 25th.

In addition to the merits of the claim it should be paid for violation of paragraph 1(a) Rule 31 of our Agreement. We are therefore appealing to you to honor the claim as presented."

The notarized affidavits dated November 25, 1963, as referred to read as follows:

"To Whom It May Concern:

This is to certify that on September 25, 1963, that M. P. Johnson, Local Committeeman, advised me that he had just received rejection of time claim from Mr. Henderson, Assistant Master Mechanic, Hialeah Shops.

The time claim entered for work performed by outside contractors installing new water line in Car Dept.

/s/ V. W. Scott
Hialeah Shops C.D."

"To Whom It May Concern:

This is to advise that when I returned to work on September 27, 1963, from my rest days, I was advised by M. P. Johnson, Local Comm. that Mr. Henderson, Assistant M. M. Hialeah Shops, had given him a letter on September 25, 1963, declining our claim for pipe work performed by outside contractors installing new water lines in Car Dept.

/s/ P. E. Hilliard
Hialeah Shops, C. D."

"To Whom It May Concern:

This is to advise that on September 25, 1963, Mr. Henderson, Assistant M. M. Hia. Shops, gave me personally a letter declining claim entered July 26, 1963, involving work performed by outside contractor installing new water lines in Car Dept.

/s/ M. P. Johnson
Local Comm. S. M. W.
Hialeah Shops"

CHIEF MECHANICAL OFFICER TO GENERAL CHAIRMAN,
FEBRUARY 11, 1964

"Yours of December 26th appealing claim of 19 named Sheet Metal Workers at Hialeah Shops account contractor renewing the overhead water lines in March, April and May 1963.

I cannot agree with your contention that the claim should be paid for non-compliance with provisions of Rule 31 account Mr. Henderson not rendering decision within 60 days. As explained by Master Mechanic Alexander in his letter of December 9, Mr. Henderson declined the claim in letter dated September 13, which he personally delivered to Local Chairman Johnson on September 23 (in line with past practice in handling of correspondence in connection with claims), delivery being withheld account Mr. Johnson being on vacation. Attached is copy of Mr. Henderson's affidavit attesting to such delivery date and reproduction of notes on his desk calendar of September 20 and 23, also in substantiation thereof. It is pertinent to point out that if Mr. Henderson did not deliver the letter until September 25, as contended by Mr. Johnson, it would be logical to conclude that he would have promptly invoked the time limit provisions and called for the payment of the claim instead of referring it to you for further handling on its merits. That the latter was the case is borne out by the fact that you asked Mr. Alexander for an extension of time.

As to the merits of the claim, there are none. As pointed out by Mr. Alexander and not refuted, at the time it was necessary to renew and enlarge the water lines handling was being given with you and the local chairman in an effort to locate and employ sufficient pipefitters to take care of necessary maintenance of equipment at Hialeah which had increased due to Seaboard handling the Coast Line trains into and out of Miami. Additional pipefitters could not be secured and there was actually a shortage thereof when this job was contracted, necessitating working the existing force on overtime actually 677½ hours. So it was impossible for our pipefitters to take on any additional work, to say nothing of a project of the magnitude involved.

The 2½ inch diameter 4,000-ft. overhead pipe line carrying drinking water from 50,000-gal. elevated city storage tank (supported on 2 rows of creosoted poles paralleling service tracks), which supplied water for filling water tanks on passenger cars, had become scaled and corroded, which slowed down the watering of cars. With the addition of the Coast Line trains the available servicing time was so reduced that it was impossible to take care of the watering without delays, necessitating corrective action. Engineering study developed that what was needed was a larger 4-inch cement lined, cast iron, corrosive resistant pipe to replace the 2½ inch wrought iron pipe, with a booster pump to supplement the inadequate pressure furnished by the elevated tank, which was approved as a capital project by our chief executive officer, cost \$35,000.

In keeping with past practice on projects of this type and magnitude, the entire job, including booster pumping station, was contracted to the Poole and Kent Company, Mechanical Contractors, Miami. The Seaboard furnished the pipe, valves, creosoted poles and pump, the contractor to furnish small items such as brackets, gaskets, nipples. The contractor furnished necessary crane with riggers, welding machines, scaffolding, lumber, concrete, and necessary forces for the entire job, including the replacing of 16 poles with new creosoted poles, electrical and carpentry work. Carrier paid contractor a total

of \$19,636.49, which included \$5,688 for electrical work by sub-contractors.

So it is apparent that the project contracted included work of various crafts and was a large specialized project, which has customarily been contracted. Also, as you know the Adjustment Board has held that, 'A Carrier is not required to split up work and contract a part and retain a part for its employees to perform where the whole project is of such a nature as to warrant the Carrier, in a reasonable exercise of its managerial judgment, to contract the work.' Furthermore no other craft made any claim in connection with this project.

For the reasons outlined, there is no merit to the claim and it is declined. Frankly, I am surprised that it would be appealed to me and I have written at length feeling that you may not have had all the facts in the case."

Mr. Henderson's notarized affidavits dated January 8, 1964, read as follows:

"Mr. L. B. Alexander, M. M.,
Jacksonville, Florida

Further my letter of September 26, 1963 in which I advised you that I personally delivered letter to Pipefitter Committeeman Melvin Johnson, declining his time claim for pipefitters. This letter was delivered to Mr. Johnson on September 23, 1963. I have checked my records and find this date of delivery to be correct and is further verified by my daily desk calendar notes which is noted on Friday, September 20th to deliver letter to Johnson on Monday, September 23rd, further noted on September 23rd that letter was delivered to Johnson on that date, September 23, 1963 at approximately 2:15 P. M. at the Hialeah Car Department. I am attaching my notes on this for your information.

/s/ W. S .Henderson

Asst. Master Mechanic."

Penciled notations on daily desk calendar, in Mr. Henderson's handwriting, showed for Friday, September 20, 1963:

"Johnson letter deliver Monday."

and for Monday, September 23, 1963, showed:

"Deliver letter to Johnson
Delivered 9-23-63

/s/ W. S. H."

GENERAL CHAIRMAN TO CHIEF MECHANICAL OFFICER,
APRIL 3, 1964

"Upon receipt of your letter of February 11, 1964 in which you went into some detail in declining claim of the sheet metal workers

at Hialeah Shops involving the contracting to outside contractor the installation of a pipe line within the shop, a further check of the matter was made. With reference to claim being paid for violation of Rule 31 of the Agreement, and Mr. Henderson's alleging the letter of denial was delivered on September 23rd account of Mr. Johnson being on vacation, I find that the organization had an alternate representative during the period Mr. Johnson was on vacation. In addition we find it strange that if the letter was to be delivered on the 23rd as Mr. Henderson's desk calendar indicates, why was the letter not dated on the date it is alleged it was delivered instead of September 18th. I cannot agree that the fact that I called Mr. Alexander for an extension of time would sustain the position the letter was delivered on the 23rd, for had I realized the full facts, it would not have been necessary that an extension of time be requested even if as alleged by Mr. Henderson that the letter was delivered on the 23rd. As I explained to Mr. Alexander when I called him, I had been out of my office for a period of a little over 30 days, and upon going over my mail I was guided by the date of the letter, not realizing that the date and delivery of the letter were not the same. I did request an extension. Upon being refused, a closer look at the claim was made and I discovered the discrepancy.

Mr. Alexander did talk to me with regards to securing additional pipefitters explaining the pipe line to be installed was an emergency due to the Coast Line trains being turned in Miami. However, in our discussion it developed that the pipe line in question was the one that had been slated for renewal for some little time prior to the Coast Line trains being turned and I could not agree that the renewal of the line constituted an emergency. If the Carrier was unable to secure pipefitters who were qualified under their rigid age and physical policy the present forces should be allowed to do the work, that in the past the regular forces had renewed in its entirety a sump (or raw) water line that was run on the same brackets beside the treated water line that was to be renewed. Also, over the years the sheet metal workers have repaired and maintained the water line in question.

While no claim is being made for the electrical work involved in the installation of this line for which I am advised required the renewing of several poles, two electrical pumps and changing their locations, work of this nature has been performed in the past shop electricians, in fact at the time the sump water line was renewed some poles were renewed by the electricians.

It is our position the work was not of such magnitude or beyond the capability of the employees to perform with the facilities of the Carrier. As you know the Adjustment Board has held that work coming within the scope of the applicable agreement, cannot, as a matter of principal be contracted out to outside contractor, that only when it was unreasonable or inequitable to be performed by its employees could it be contracted out. In the instant case it is felt that no emergency existed inasmuch as the outside contractor required a period of 2 and ½ months to install the line, a part of which the contractor's employees were on strike. The Carrier's employees were available and the facilities of the Carrier were sufficient to allow them

to perform their work. While the installation of this pipe line may be a part of the contemplated up-grading of the Hialeah Shop, I cannot agree that an elapsed period of some 6 months between projects of up-grading in the overall shops be called one contract of great magnitude.

For the above outlined reason, your decision of the claim is being appealed."

GENERAL CHAIRMAN TO DIRECTOR OF PERSONNEL,
APRIL 3, 1964

"On March 15, 1963, outside contractor began renewing overhead water line in car department between tracks 1-2 and 3-4 Hialeah Shops. The work consisted of renewing the present facilities with a larger pipe line to supply drinking water to the tanks of the passenger cars. There were approximately 4,000 ft. of 4 inch pipe, 47 drops of 1½ inch galvanized pipe along with numerous fittings including elbows, tees, cutout valves, reducers and nipples installed and renewed. Work was completed on May 31, 1963, a period of 2½ months. Men working for the contractor consumed a total of 180 working days in the renewing of this water line. For violation of rules 28, 29, 98 of our Agreement, time claim was entered in behalf of the following sheet metal workers for the number of 8 hour days indicated:

S. H. Polk	10 days	W. A. Best	10 days
W. C. Weeks	5 days	L. Skipper	10 days
E. P. Fleming	10 days	J. J. Mann	10 days
P. W. Hilliard	10 days	R. S. Peacock	10 days
V. W. Scott	10 days	F. L. Sloan	10 days
R. D. Simpson	10 days	R. L. Fordham	10 days
J. A. Lamanski	10 days	L. A. Pollard	10 days
R. Brown	10 days	L. B. Sims	10 days
L. S. Childress	10 days	L. Thrift	10 days
		H. Paxton	5 days

This claim was declined by Mr. H. P. Henderson, Assistant Master Mechanic, in letter dated September 13, 1963 for the reason there were not sufficient sheet metal workers to perform the work. The letter of denial from Mr. Henderson was delivered to Mr. Johnson, Local Representative, on September 25th a lapsed period of 61 days from date of the claim which included violation of rule 31. This claim has been handled up through and including Mr. Mercer, Chief Mechanical Officer, without a satisfactory disposal.

We therefore are appealing to you to honor the claim as presented or suggest date for conference. Will you please advise?"

DIRECTOR OF PERSONNEL TO GENERAL CHAIRMAN,
APRIL 21, 1964

"Yours of April 3rd appealing decision of Mr. H. S. Mercer, Chief Mechanical Officer, in claim in behalf of 19 named Sheet Metal

Workers at Hialeah Shop account contractor renewing the overhead water lines in March, April and May 1963.

I have investigated this case and fully concur in the decision of Mr. Mercer, who outlined in detail why the claim had no merit, and I will add that if there was ever a claim appealed to me that was totally lacking in any merit whatsoever this is it.

I do not agree with your contention that Mr. Henderson did not deliver his letter of declination until September 25th. This was clearly refuted in Mr. Mercer's letter of February 11th. There was nothing unusual about Mr. Henderson's letter being dated September 13th. If you will refer to a 1963 calendar you will note that was on Friday, which was the last day worked by Mr. Johnson before he went on a week's vacation, and not being able to effect delivery that day naturally Mr. Henderson would hold it for delivery on the 23rd, the date Mr. Johnson returned from vacation, since it was the practice among the local committeemen and mechanical officers to personally deliver written claims and replies to each other. I will reiterate that if Mr. Henderson did not deliver the letter until September 25th, as alleged, it is strange that the time limit provisions were not immediately invoked instead of waiting until November to claim violation thereof.

As to the project that was contracted to The Poole & Kent Company, Mr. Mercer advised you fully on this. The project was of considerable magnitude, (such as not performed by Sheet Metal Workers) involving also electrical work and carpentry work, and as has customarily been done for many years, the entire project was contracted. Your claim covers only a portion of the work, and as you well know, such a claim is not valid. The Second Division held in Award 4019: 'In any event, there are many awards holding that a Carrier is not required to split up work so as to retain part for performance by its employes where the whole project is such as to warrant the Carrier, in the reasonable exercise of its managerial judgment, to contract the work. Awards 2186, 3278, 3433, and 3559; Third Division Awards 3206, 4954, 5304 and 5563.' Also, see Third Division Award 12317. Also, no other craft made any claim for work on the project.

The record establishes the fact that at the time this work was to begin and afterwards there was a shortage of Sheet Metal Workers at Miami to take care of regular work on equipment which has increased account the FEC strike and the Seaboard handling Coast Line trains into and out of Miami, necessitating the working of the existing force on overtime, totaling 677½ hours during the period of the claim. This further establishes the claim as being without any merit since the claimants were not available to take on any additional work, much less a project of this magnitude. Also, since claimants suffered no loss account of this project being contracted they could have no valid claim for penalty payments even if it could be held that the agreement was violated. As held in Third Division Award 10963 to award such payments would be imposing a penalty on the Carrier and giving the employes a windfall, neither of which is provided for or contemplated by the agreement. Also, see Third Division Awards 12131; Second Division Awards 4254, 3967, 4083.

Your allegation that Sheet Metal Workers were not employed during the period in question account of the Carrier's 'rigid age and physical policy' is neither factual nor persuasive. One of the claimants (H. Paxton), who was employed April 29, 1963, was then 54 years old; another one hired in February 1965 was 55 years old; and another pipefitter hired in April 1963 was 52 years old. Of course, such employes, as in the case with all classes of employes, were required to pass a physical examination, as provided for in Rule 40. Such examination is not unusual among the Shop Crafts on railroads generally, including your home road.

For the reasons outlined, the claim is without any merit and is accordingly denied."

DIRECTOR OF PERSONNEL TO GENERAL CHAIRMAN,
JUNE 30, 1964

"Confirming conference discussion June 11th concerning claim at Hialeah Shops account contractor renewing the overhead water lines in March-May, 1963, which was declined by me on April 21st.

This case was thoroughly reviewed and as referred to in my letter of April 21st, there was a large project involving much more than the installation of the two overhead pipe lines. In the first place, the pipe that was used was ductile cast iron pipe, which necessitated special equipment for cutting and special mounting machines, which the railroad did not have, and the replacement of creosoted poles referred to by Mr. Mercer included combination power line poles carrying the water, steam and air lines as well as electric lines, which of course could not be considered pipefitters' work. The same was true of the concrete work and carpentry work and the project included electrical work in the installation of hydro-pneumatic pressurizing system for the water lines, including pumps, tanks and mechanized valves and an electro-hydrostatic control system. To connect the service lines and the pressurizing system to the elevated tank required the installation of a 1 inch and a 4 inch water pipe line, each extending from the ground to the under side of the tank. The tank tapping operations and the hanging of the pipes on the legs of the tank required equipment not available at our shops and the employment of men skilled in such operations. Our Sheet Metal Workers have never performed such a project, and in 1950 the original pipe lines that were renewed by the Poole & Kent Company were installed by M. H. Harrison Construction Company. Similarly, in 1953 the J. V. Andrews Company of Charlotte constructed fuel lines from the storage tanks near freight station at Hamlet, North Carolina to elevated tanks at the passenger station, and in 1947 the George D. Auchter Company furnished and installed 5,000 lin. ft. of above ground oil lines as well as 3,200 ft. of underground drinking water lines at Wildwood. You will recall that in 1958, in connection with claim filed account contractor installing air conditioning, heating and plumbing facilities in Richmond freight warehouse, we listed numerous plumbing and heating projects at various points on the system that were contracted.

You stated you were familiar with the holding of the Adjustment Board that, 'A Carrier is not required to split up work and con-

tract a part and retain a part for its employees to perform where the whole project is of such a nature as to warrant the Carrier, in a reasonable exercise of its managerial judgment, to contract the work'; however, you felt the claimants should have been permitted to perform some of the work in question. You have never explained how this could have been accomplished and how it could have been coordinated with the contractor's forces, to say nothing of the fact that at that time we could not secure enough pipefitters to take care of the normal work requirements at Hialeah Shops and it was necessary to work the existing force on overtime.

There was absolutely no basis whatever for the claim and no reason whatever for changing the decision given in my letter of April 21, 1964."

In substantiation of the fact that sheet metal workers have never performed work on a project of the type and magnitude involved in the instant claim, shown below are some previous projects on the system which were contracted, which were cited to the general chairman:

- "1942 - Raleigh, N. C., passenger station, plumbing, heating.
- 1943 - Hamlet, N. C., passenger station, plumbing, heating.
- 1943 - Hamlet, N. C., storehouse station, plumbing, heating.
- 1944 - Jacksonville, Fla., wash and locker bldg., plumbing, heating.
- 1944 - Hamlet, N. C., yard office, plumbing, heating.
- 1945 - Jacksonville, Fla., freight station, plumbing, heating.
- 1946 - Hermitage, Va., Wash and locker bldg., plumbing, heating.
- 1946 - Wildwood, Fla., combination station, plumbing, heating.
- 1947 - Hamlet, N. C., Roadway storehouse, plumbing, heating.
- 1947 - Savannah, Ga., CTC building, plumbing, heating.
- 1947 - Birmingham, Ala., freight station, plumbing, heating.
- 1948 - Tampa, Fla., Div. Office bldg., heating, air-conditioning.
- 1948 - Savannah, Ga., wash & locker bldg., plumbing, heating.
- 1949 - Hermitage, Va., Diesel shop, plumbing, heating.
- 1949 - Americus, Ga., Diesel shop, plumbing, heating.
- 1950 - Hialeah, Fla., Diesel shop, plumbing, heating.
- 1950 - Jacksonville, Fla., Diesel shop, plumbing, heating.
- 1951 - Tampa, Fla., Car Shop, plumbing, heating.
- 1951 - Jacksonville, Fla., Car shop, plumbing, heating.
- 1952 - Howells, Ga., yard office, plumbing, heating.
- 1952 - Savannah, Ga., Shop facilities, plumbing, heating.
- 1953 - Hamlet, N. C., Diesel shop, plumbing, heating.
- 1954 - Raleigh, N. C., freight station, plumbing, heating.
- 1955 - Hamlet, N. C., Wheel & Axle shop, plumbing, heating.

- 1956 - Jacksonville, Fla., freight station, plumbing, heating, air conditioning.
- 1957 - Richmond, Va., wash and locker bldg., plumbing, heating, air conditioning.
- 1949 - Howells, Ga., CTC bldg., plumbing, heating, air conditioning.
- 1953 - Jacksonville, Fla., testing lab., plumbing, heating, air conditioning.
- 1954 - Hamlet, N. C., yard office, plumbing, heating, air conditioning.
- 1956 - Jacksonville, Fla., Div. Office bldg., plumbing, heating, air conditioning.
- 1951 - Hialeah, Fla., depot extension, plumbing, heating, air conditioning.
- 1952 - Hermitage, Va., shop facilities, plumbing, heating, air conditioning.
- 1958 - Richmond, Va., freight station, plumbing, heating, air conditioning.
- 1958 - Hamlet, N. C. Roadway shop, plumbing and heating facilities.
- 1961 - Jacksonville, Fla., Div. Office Bldg., modification air conditioning system."

POSITION OF CARRIER: There is absolutely no merit whatsoever to the claim. In the first place, as the record clearly shows and not disputed, at the time this project was contracted and during the period the work was performed there was a shortage of sheet metal workers at Hialeah (Miami) Shops to take care of necessary work on railroad equipment, which had increased account of the Florida East Coast strike and the operation by the Seaboard of Atlantic Coast Line passenger trains into and out of Miami which were formerly handled by the Florida East Coast between Jacksonville and Miami. Also, as shown by the record, and not disputed, during the period the work was performed by the contractor it was necessary for the existing force of sheet metal workers at Hialeah Shops to work overtime, totaling 677½ hours. Every effort was made to secure additional sheet metal workers, including handling with general chairman Lanier, who was and is also general chairman of sheet metal workers on the Atlantic Coast Line Railroad (where he holds seniority), the Florida East Coast Railway, the Savannah and Atlanta Railway, Jacksonville Terminal Company and Norfolk-Portsmouth Belt Line Railroad, for assistance in filling our needs. So with a shortage of sheet metal workers for regular railroad work, and claimants working regularly and also on overtime in the performance thereof, claimants were not available for and could not have performed the work of installing the water lines, even assuming (without conceding) it was proper to assign them to such a project. As referred to in the record, the general chairman was never able to explain how the claimants could have performed such work in addition to performing their regular work on railroad equipment and working overtime thereon.

Sheet metal workers never performed the work on a project of the magnitude and type involved in this case, which also involved other than pipe work, and such projects have always been contracted. As the record shows, the 2½ inch pipe lines (which were replaced by 4 inch lines by the Poole & Kent Company) were originally installed in 1950 by the H. H. Harrison Construc-

tion Company, and similar pipe line installations were made at Hamlet, North Carolina in 1953 by the J. V. Andrews Company and at Wildwood, Florida in 1947 by the Geo. D. Auchter Company. Also cited in the record were numerous projects on the system which were contracted in past years. Since being assigned as general chairman of sheet metal workers on this property in 1957 General Chairman Lanier handled claims in behalf of Sheet Metal Workers in 1958 account contractors installing air-conditioning, heating and plumbing facilities in Richmond Freight Station and heating and plumbing facilities in Hamlet Roadway Shop, which were declined and not progressed; also in 1962 he handled claim for pipe work in connection with contractors modifying the air-conditioning system in Division Office Building at Jacksonville in 1961, which was declined and while the claim was appealed to Second Division, NRAB in April 1963 (Case No. 6367) the organization of its own volition withdrew the claim on July 16, 1963, without any commitment from or adjustment in position of the Carrier. The general chairman was then fully acquainted with the practice of contracting such projects and Carrier's position in connection therewith, supported by the numerous contracted projects which were cited to him and again referred to in the instant claim. Carrier is, therefore, unable to comprehend any basis for appealing the instant claim to the Second Division. If there was ever a claim that was completely devoid of any merit whatsoever, this is such a claim.

In addition to this being a specialized project and requiring the use of equipment not owned or used by the Carrier, the project involved more than just pipe work, all of which was contracted to the Poole & Kent Company. It also included concrete and carpentry work as well as electrical work in removing and replacing creosoted poles and the installation of hydro-pneumatic pressurizing system for the water lines, including electric pumps, tanks and mechanized valves and an electro-hydrostatic control system. The claim of sheet metal workers covered only a portion of the work and in keeping with the consistent holdings of the Adjustment Board such a claim is without validity. The Second Division held in Award 4019:

"In any event, there are many awards holding that a Carrier is not required to split up work so as to retain part for performance by its employees where the whole project is such as to warrant the Carrier, in the reasonable exercise of its managerial judgment, to contract the work. Awards 2186, 3278, 3433 and 3559; Third Division Awards 2819, 3206, 4954, 5304 and 5563." (See also Second Division Awards 2377, 2458 and Third Division Award 12317.)

No claim was ever filed by any other craft covering the concrete and carpentry work involved. Likewise no claim was filed by electricians covering the electrical work involved, and this could not be due to oversight or not being aware of the project because the general chairman of electricians on this property is employed in Carrier's Hialeah (Miami) Shops.

If there was such a complete violation of the working agreement in contracting this project as alleged by the organization, it is unexplained why the organization would wait until July 26, 1963 to file a claim therefor, 4½ months after the work began and 2 months after it was completed. Section 1(a) of Rule 31 of the Agreement specifies that, "All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of

the occurrence on which the claim or grievance is based." Section 2 of the rule specifies that a claim may be filed at any time for an alleged continuing violation of any agreement but it also specifies: "However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof." Therefore, even if it could be held that there was a violation of the agreement in contracting the project, under the clear requirements of Rule 31 payment for such violation would be restricted to period 60 days prior to July 26, 1963 (not from March 15, 1963 through May 31, 1963 as claimed). This would limit payments to five days between May 27 and May 31, 1963.

The organization alleged that Assistant Master Mechanic Henderson's declination of the claim was not rendered within 60 days and that the claim should be allowed as presented account failure to comply with provisions of Rule 31. As the record shows, the evidence did not substantiate such allegation, Mr. Henderson making sworn affidavit that he delivered his declination to Local Chairman Johnson on Monday, September 23, 1963, within the 60-day time limit, substantiated by his personal notations on his desk calendar on September 20th and September 23rd. As out in the record, if Mr. Henderson did not deliver his declination until September 25th, as alleged, it is strange the 60-day time limit provisions were not immediately invoked instead of waiting two months to inject such allegation. Here we have the peculiar situation of the organization alleging that the claim should be paid because it was **not declined** in accordance with requirements of Rule 31 whereas the **record** clearly and conclusively shows the claim as filed by it was positively **not** in accordance with requirements of Rule 31.

As set out in the record and not disputed, the claimants not only worked regularly during the entire period covered by the claim but also worked overtime account shortage of sheet metal workers. Therefore, since they suffered no loss account of the project being contracted they could have no valid claim for any penalty payments during such period even if it could be held that the agreement was violated. As held in Third Division Award 10963, to award such payments would be imposing a penalty on the Carrier and giving the employes a windfall, neither of which is provided for or contemplated by the agreement. Also see Third Division Awards 12131, 12937, 13171; Second Division Awards 4254, 3967, 4083, among others.

There is no merit to the claim and it should accordingly be denied. As held in Third Division Award 3523, without a referee, involving a claim on this property, "The claimant in coming before this board assumes the burden of presenting some consistent theory which, when supported by the facts, will entitle him to prevail."

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 is the Claim of the Petitioners that, under the effective Agreement, other than Sheet Metal Workers were improperly assigned to renew an overhead water line in the Car Department, Hialeah, Florida, Shops between March 15, 1963, and May 31, 1963. Petitioner in support of its Claim relies on Rule 98, the "Classification of Work" rule for Sheet Metal Workers and Rule 31(a), requiring the Carrier to notify Petitioner of the disallowance of the claim or grievance within 60 days from the date the claim is filed.

As to the application of Rule 31(a) — it appears the claim was filed July 26, 1963; there are conflicting statements as to just what date the notice of disallowance of the claim was served on the Local Chairman. The notice of disallowance of the claim was dated September 13, the day before the Local Chairman left for his vacation and could not be served at that time. The Local Chairman contends the notice was not served upon him until September 25, 1963, one day past the 60 days required in the Agreement. Carrier's representative alleges the Local Chairman was served on September 23. Both of them signed affidavits. No notice of this alleged violation was called to Carrier's attention, however, until November, 1963, when Carrier had refused an extension of time to the Petitioner. Under all of these circumstances, it not having been called to Carrier's attention at the time of the reception of the notice of disallowance that it was not timely served, we will have to resolve the question against the Petitioner.

Let us then proceed to a consideration of the Claim on the merits: At Hialeah, Florida, the Carrier maintains a repair shop where there are employed members of all Shop Crafts including Sheet Metal Workers. A water line runs through the shop which is used for the purpose of supplying drinking water for passenger cars, all of the facilities having been originally installed by a contractor, and since its construction Sheet Metal Workers having maintained all the water lines. The pipe originally constructed was 2½ inch pipe. It was determined that during the course of time for various reasons set forth in the Record this 2½ inch pipe had proved inadequate as it was impossible to take care of the watering of cars. It was decided that what was needed was a larger 4 inch cement-lined pipe with a booster pump to replace the 2½ inch pipe. The claim of the Petitioner covered only a portion of the work and it is not effectively denied that there was a shortage of Sheet Metal Workers at the time this work was about to start. Furthermore what was involved was more than just pipe work. There was carpentry and electrical work to be performed. In addition this was a specialized project requiring the use of equipment not owned or used by the Carrier.

In keeping with past practice on this property, involving work of this type and magnitude, the entire job including the booster pumping station was contracted out. That this had been the practice was evidenced by thirty-six projects named in the Record.

The Carrier is not required to split up a part and retain a part of its employes to perform where the whole project is of such a nature as to warrant the Carrier in the exercise of managerial judgment to contract out the work. Under the facts presented in this Record, there is nothing in the current agreement forbidding it from contracting out the work here involved.

See Awards 4019 and 4642.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois this 18th day of November, 1966.