

Award No. 2952

Docket No. 2777

2-CUT-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly assigned Bridge and Building employees to perform Carman Painters' work by painting stock bins in Section A of the Stores Department on October 8, 10, 18, 19, 22 and 24, 1956.

2. Accordingly the Carrier be ordered to compensate all Carman Painters who were in service October 8, 10, 18, 19, 22 and 24, 1956 a total of 56 hours at the applicable rate, to be divided equally among them.

EMPLOYEES' STATEMENT OF FACTS: At the time of the violation the carrier maintained a force of four (4) carman painters on the first and third shifts, shown on the force statement, consisting of two seven day assignments, one on the first shift with the working hours 8 A.M. to 4 P.M., one on the third shift with the working hours 11 P.M. to 7 A.M., one six day assignment on the first shift with the working hours from 7 A.M. to 3 P.M. and one regular relief assignment to work on rest days of six and seven day assignments, all jobs having two consecutive rest days and twenty minutes for lunch.

The carrier assigned bridge and building painters to paint three metal stock bins 15' 4" long, 3' wide and 7" high; also a number of stock bin pans 17½" long, 6" wide with ½" sides in Section A of the Stores Department on October 8, 10, 18, 19, 22 and 24, 1956. These bridge and building employees worked a total of fifty-six (56) hours on this assignment, 12 hours on October 8, 12 hours on October 10 and 8 hours on October 18, 19, 22 and 24, 1956. These bins and pans are portable and in no sense a part of a bridge, building or structure.

Carman painters, hereinafter referred to as the claimants, were available to perform this work.

does not need to be established item by item. We are required to state, therefore, that by practice on this Carrier the work may be performed by Carmen or B and B employes. We are required to take notice of the exception stated in the quoted portion of Rule 73(a). There was not, therefore, a violation of the agreement in the instant case.

AWARD

Claim denied."

Here we have three cases covering the same organization with The Cincinnati Union Terminal Company and the resulting three awards all stating that the carmen's organization does not have the exclusive right to perform the work complained of in claim. In Award 2361 stated in part—**"since we have held they (carmen) did not have the exclusive right to build these platforms, we do not think they had the exclusive right to paint them."** Emphasis by carrier. Also see Awards 1512, 1691, 1764.

The practice of B and B employes doing this work has been in effect for over 21 years and was in effect prior to September 1, 1949, effective date of our controlling agreement.

We are submitting as carrier Exhibit #1 list of dates on which B and B painters performed work in territory in which carmen painters work day in and day out.

A practice of over 21 years standing certainly had the acquiescence of all parties concerned and the carmen by neglecting to take the proper action in opposition of the practice have implied consent thereto, consequently practice should not be disturbed.

The three denial awards by the Second Division, namely Awards 2360, 2361 and 2363 with same organization and this carrier is conclusive evidence that there has been no violation of Rule 73 as claimed by the claimant organization.

The present claim is without merit and carrier respectfully requests the Second Division to deny claim in its entirety.

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.

The Carrier assigned Bridge & Building employes to paint stock bins in Section A of the Stores Department on October 8, 10, 18, 19, 22 and 24, 1956.

The claimants contend that this is Carmen's work and should have been assigned to them, under Rule 73 (a) of the Agreement.

The same claim involving the same parties, was considered by this Division in Awards 2360, 2361 and 2363. In each award the claim was denied.

In Award 2360 of this Division we find the following:

"Rule 73 (a), insofar as here material provides: "Carmen's work shall consist of * * * planing mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work, * * *".

The foregoing language, down to the exception, would specifically include the work here involved. The question then arises, does the exception authorize the carrier to have B&B forces do this work?

We think 'generally recognized' bridge and building work means what the language indicates, that is, the construction, maintenance and dismantling of buildings and bridges. It would, however, also include any other work which, at the time the agreement herein became effective, was, as a matter of practice, being performed by B&B forces. See Award 1656 of this Division. Such is the situation here, for the record discloses the carrier's B&B forces have, at all times since the opening of the Terminal in 1933, performed this same type of work in keeping in repair some 239 wooden lockers owned by the carrier.

In view of that fact we find the claim here made to be without merit and should therefore be denied."

The language just quoted from Award No. 2360 is pertinent and applicable here.

The claimants seek to distinguish this case from Awards 2360, 2361 and 2363 and they rely upon Employees' Exhibit A, contending that this order of the Master Mechanic places the Stores Department under the jurisdiction of the car and locomotive department. The record does not bear out this contention. While the carrier did not specifically deny that the Stores Department is under the jurisdiction of the car and locomotive department, there is nothing in the record to support the contention of the employees.

We do not find that Exhibit A in and of itself demonstrates that the storeroom was transferred to the jurisdiction and direct supervision of the locomotive and car department.

In view of the foregoing we have come to the conclusion that the claim here made is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1958.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 2952, 2953, 2954

The statement in the findings on Award No. 2952 that the language quoted from Award No. 2360 is pertinent and applicable to the instant cases is misleading for the reason that the language quoted refers to Award No. 1656 but makes no mention of the fact that the findings in that award stated that "... all painting of moveable supply bins, work benches, furniture and the like, is the work of carmen as against the claims of Bridge and Building forces."

In a futile attempt to justify a denial award in each of the instant cases it is stated in the present findings that "... there is nothing in the record to support the contention of the employees" that the Stores Department is under the jurisdiction of the car and locomotive department. This statement is made in spite of the fact that the record in each case contains a bulletin put out by the carrier under date of August 27, 1956 showing that, effective September 1st, 1956 the Stores Department would come "under the Supervision and Jurisdiction of the Master Mechanic." The master mechanic, as anyone in the railroad industry is aware, has charge of the Locomotive and Car Department, thus the aforementioned bulletin automatically placed the Stores Department within the Locomotive and Car Department.

Under the facts of record and Rule 83(a) of the controlling agreement the instant claims should have been sustained.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner