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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6563
Docket No. 6412
2-C&O-CM-'73

The Second Division consisted of the regular members and in addition Referee Edmund W. Schedler, Jr. when award was rendered.

Parties to Dispute:

{ System Federation No. 41, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)

{ The Chesapeake and Ohio Railway Company
(Chesapeake District)

Dispute: Claim of Employees:

1. That Freight Car Painter, Paul B. Browns' service rights and rules of the Shop Crafts Controlling Agreement were violated October 2, 1971 account being suspended of his duties and his work transferred to the Carmen, in violation of Supplement No. 5 of the Shop Crafts Agreement.
2. Accordingly Brown is entitled to be compensated five (5) days each week at the freight car painter straight time rate plus any overtime that he would have worked had he not been furloughed, commencing October 3, 1971 to continue until Brown is restored to his position as freight car painter.

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.

Carrier has a repair facility at Clifton Forge, Virginia operating 24 hours per day for 7 days a week. Claimant was employed as a Freight Car Painter and he was duly notified his position was being abolished as of October 3, 1971.

The Organization quoted the second paragraph of Supplement No. 5 (page 136) of the Shop Craft Agreement) that stated:

"(2) The patternmaking, upholstering and painting trades are as much separate and distinct trades as blacksmiths, electricians, machinists, boilermakers and sheet metal workers, carpenters, and other well known trades, and it is necessary for the Company to have the same freedom in employing patternmakers, upholsters and painters as it has in employing other tradesmen whom you represent."

The Organization contended that other carmen have been performing painter's work that normally would have been performed by the Claimants and therefore Claimant is entitled to be compensated five (5) days each week at the freight car painter straight time rate plus any overtime that Claimant would have worked had he not been furloughed.

Carrier contended the Organization did not avail themselves to the remedy found in rule 32 (c) as follows:

"Rule 32 (c) Effective November 1, 1964-At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will so far as they are capable of doing so, perform the work of any craft not having a mechanic employed at that point. Any dispute as to whether or not there is sufficient work to justify employing a mechanic of each craft, and any dispute over the designation of the craft to perform the available work shall be handled as follows: At the request of the General Chairman of any craft the parties will undertake a joint check of the work done at the point. If the dispute is not resolved by agreement it shall be handled under provisions of Rules 35, and 36, and pending the disposition of the dispute the carrier may proceed with or continue its designation."

The carrier contended there was insufficient work to justify employing a full time painter.

In addition the carrier contended this claim fails on its merits because the work in dispute was not exclusively painter's work.

The Board finds that claim fails because the Organization did not prove there was enough work to keep the Claimant on the job. Rule 32 (c) required a joint checking of the facilities to determine the work done and the Organization did not avail themselves to this remedy.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of July, 1973.