

Award No. 2610
Docket No. 2439
2-PULL-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Curtis G. Shake when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That The Pullman Company be ordered to additionally compensate Carman Painter H. L. Pettis in the amount of two hours for having improperly used other than an employee to paint the trucks on Pullman Car Sarasota on August 18, 1955 under The Pullman Company current agreement, Atlanta, Georgia.

EMPLOYEES' STATEMENT OF FACTS: The Pullman Company, hereinafter called the carrier, maintained at Atlanta, Georgia, a seniority roster subdivision exclusively consisting of carmen painters and there were four of them employed and two on furlough at the time this dispute occurred.

The carrier nevertheless, on August 18, 1955, elected to either standby or authorize the trucks of Pullman Car Sarasota painted by G. E. Wallace, employed by the Seaboard Air Lines as a carman painter in their yards at Atlanta, which is confirmed by the copy of letter dated at Atlanta, Georgia, November 10, 1955, addressed "To Whom It May Concern", signed by G. E. Wallace, painter, Seaboard Railroad, submitted herewith and identified as Exhibit A.

The painting of trucks on this pullman car was performed on Thursday, May 18, 1955, between 10:30 A.M. and 1:30 P.M. exclusive of the lunch period and which occurred within the regular assigned hours of work and days of work of Carman Painter H. L. Pettis, hereinafter referred to as the claimant, whose assignment of duties were from 8:00 A.M. to 4:30 P.M., Mondays through Fridays, with off days Saturday and Sunday.

This dispute has been progressed with the carrier up to and with the highest officer designated thereby to handle such disputes and, consequently, he declined to adjust it.

Foreman, all yards, in Atlanta from October 1947 until December 1955; then as Yard Inspector from December 1955 until the present time.

In working in supervisory capacity I can recall no incident where Pullman Painters were used in the painting of trucks on cars operating into Atlanta, with the exception of a few cars that were Yard Shopped in Atlanta during 1945-1947.

In the performance of my duties as Yard Inspector I know of no place within my territory where this work is performed by Pullman painters."

In the instant case, The Pullman Company and the Seaboard Air Line Railroad clearly intended that truck painting be considered railroad work under the Uniform Service Contract. This intention is evidenced by the past practice in the Atlanta District. Consequently, the work is not pullman work and pullman employes have no right to it.

CONCLUSION

In this ex parte submission the company has shown that neither Rule 81 nor any other rule of the carmen's agreement grants pullman painters the right to paint trucks on sleeping cars in the Seaboard Yard, Atlanta, under the conditions here present. Also, the company has shown that at the time the current carmen's agreement was negotiated it was the practice in the Atlanta District for railroad employes to paint trucks, which practice grew out of a mutual understanding between The Pullman Company and the Seaboard Air Line Railroad. Finally, the company has shown that Second Division Award 1799 supports the company's position in this dispute.

The organization's claim 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.

This is a claim on behalf of Carman-Painter H. L. Pettis for two hours additional compensation because, on August 18, 1955, G. E. Wallace, a painter for the Seaboard Air Line Railroad, painted the trucks of Pullman sleeping car Sarasota in its railroad yard at Atlanta.

Rule 81 of the agreement provides, among other things, that, "Carmen's work shall consists of . . . painting . . . all passenger cars . . . in shops and yards . . . and all other work generally recognized as painter's work." The language of the rule is broad enough to support the claim, unless it has been modified by mutual understanding or past practice.

The carrier contends: (1) that under the Uniform Service Contract between it and Seaboard the work of painting Pullman or car trucks belongs

to the railroad; (2) that such work was so recognized when Rule 81 was negotiated, and (3) that such work has been uniformly performed by railroad employes, except for a short period of time during which the carrier maintained its own yard shopping program at Atlanta.

Since the carrier relies upon an exception to the literal language of the rule, the burden is upon it to establish such exception. In our judgment it has failed to discharge that burden. The Uniform Service Contract is not before us, even if it has any application to this claim, a subject about which it is unnecessary for us to express any opinion. The evidence as to past practices is highly conflicting and indecisive. A number of supervisory officials supported the carrier's contentions but the Seaboard painter who actually performed the work in controversy, as well as others, stated positively that such work has always been regarded as belonging to the Pullman employes.

In view of the clear and unambiguous language of the rule and the failure of the carrier to establish its contentions by a preponderance of the proof, the claim must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September, 1957.