

Award No. 3226

Docket No. 2502

2-B&O-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

BALTIMORE AND OHIO RAILROAD COMPANY

(See AWARDS NOS. 2785 and 3126.)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Carrier improperly assigned other than employes of the Carmen's Craft to paint bins, cupboards, tables, racks, car and locomotive parts on February 8, 9, 15, 16, 21 and 23, 1955, March 8, 9, 10 and 11, 1955, April 27, and May 3, 23 and 24, 1955.

2. That the management be ordered to desist from assigning other than employes of the Carmen's Craft to perform the aforesaid painting in the Stores Department at Cumberland, Maryland.

3. That the management of the Baltimore and Ohio Railroad be ordered to additionally compensate Carman W. E. Bishop for four (4), eight (8) hour days and Carman C. E. Whitman for ten (10), eight (8) hour days at the applicable rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The Baltimore and Ohio Railroad Company, hereinafter referred to as the carrier, maintains and operates a Bolt and Forge Shop and Reclamation Plant at Cumberland, Maryland, wherein they manufacture car and locomotive parts, bins, racks, cupboards, tables, etc., and reclaim scrap material. The Bolt and Forge Shop, Reclamation Plant and Stores Department are all under one roof.

There are 83 journeymen carmen employed in the Bolt and Forge Shop and Reclamation Plant along with employes from the other shop crafts.

The carmen's craft now insists that the scope rule, Rule 138, carries their craft into the Stores Department. Yet Rule 138 says nothing whatever about the Stores Department. On the contrary, the rule reads: "*** * * work generally recognized as painters' work under the supervision of the locomotive and car departments, * * ***" (Emphasis added.)

The carmen have asserted no absolute right to the work in question. Certainly they cannot point to any rule in the shop crafts' agreement to support their claim. The carmen can point to painting work in the locomotive and car departments and argue that that is their work. The rule supports that conclusion. But the rule does not support the conclusion that work in the Stores Department belongs to carmen.

The Stores Department is not a mechanical department; it certainly does not fall into the category: "*** * * under the supervision of the locomotive and car departments, * * ***"

It is an independently functioning department. There is no supervision exercised over the Stores Department by either the Locomotive Department or the Car Department.

There is no dispute here but that employes of the Stores Department may not always be available to perform some phase of work to be performed within the Stores Department. The carrier may request the service of employes in the Car Department. However, under any circumstance where stores department employes are available to do the work, then by practice, by right and by rule, Stores Department employes are used to perform the work. This has been the undeniable practice over a period of many, many years.

There is certainly no denial by the carmen's craft that the scope rule of the agreement, covering Group 3 employes, is more than adequate to cover the work performed in the Stores Department. This is an academic conclusion of the simplest degree. This has been the practice over a period of many, many years. Stores Department employes have been used to do the same kind of work now here protested.

The basis of the claim asserted here is that the carrier should have used carmen to perform this work. At the time the work was accomplished, it was accomplished by employes of the Stores Department doing work that fell wholly within the jurisdiction of the Stores Department. In fact and in effect the nature of the work being accomplished at that time was work falling wholly within the scope of the agreement governing stores laborers and helpers on this property.

It is the position of the carrier in this case that the claim made here at all its parts is without merit. The carrier respectfully requests this Division to so find and to hold that the claim in its entirety is without merit.

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 original jurisdiction over the dispute between the above captioned parties involved herein.

This Division of the Adjustment Board has no jurisdiction over clerks or maintenance of way employes disputes which is established by the Railway Labor Act in Division III of the National Railroad Adjustment Board.

The above captioned parties to said dispute were given due notice of hearing thereon, and in addition Brotherhood of Railway Clerks were notified of the pendency of this dispute and the date it was set for hearing.

The third party alleged to be involved having been notified and having replied, "that neither the Brotherhood of Railway Clerks nor the employes it represents are involved in such dispute between the carrier and the representatives of another craft," we proceed to a determination of the merits of the claim in this docket.

The employes' statement of claim alleges under Item (1), fourteen specific days on which it is asserted that other than carmen painted bins, cupboards, tables, racks, car and locomotive parts; under Item (3), four days are claimed for Carman Bishop and ten days for Carman Whitman; Item (2) requests that carrier be ordered to desist from the action complained of.

Under the carrier's statement of facts it appears that the Bishop claim is for painting steel material racks in the Storehouse and that of Whitman is for painting yellow lines on the Storeroom floor.

The Classification of Work Rule which the employes claim has been violated refers to "painting with brushes, varnishing, surfacing, decorating . . . and . . . all other work generally recognized as painters work under the supervision of the Locomotive and Car Departments."

At a conference at Cumberland, Maryland, when this claim was being progressed, the parties established the **"Agreed upon facts—**That starting on or about the year 1936 and up to the year 1955 painting in the Stores Department at the Cumberland Reclamation Plant . . . was performed by Car Department employes when . . . requested . . . by the management."

In that same conference the parties stated under **"Contention of Management—**Work in question has been performed by Stores Department employes if they were available, and if not available, the Mechanical Department employes were called upon." It further was contended by the management that pursuant to a 1941 understanding between the carrier and Maintenance of Way employes, the work was thereafter assigned by circular to the Stores Department.

The carrier now contends that because the Stores Department is not a part of the Mechanical Department or Car Department, that the limitation of the rule permits such action as was taken here. To which the Organization replies that the Stores Department at Cumberland is not separate from the balance of the shop and that "Bolt and Forge Shop, Cumberland, Md." is fixed in the Carmen's Scope of Agreement and is also established as a seniority district.

This Division finds first, that there has been no practice followed whereby carmen or others have done such painting to the exclusion of all other crafts. It appears that both Carmen and Stores Department employes have done the work, so that practice is not a determining guide for us to follow.

From a review of cited awards we conclude that painting fixtures is Carmen's work, and painting buildings or parts thereof is not Carmen's work. The claim for Carman Bishop is valid and that for Carman Whitman is not valid when we draw this line and apply it to the facts at hand.

AWARD

Claim sustained in part and to the extent set forth in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1959.