

Award 3512

Docket 3253

2-SOU-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21 RAILWAY EMPLOYEES'
DEPARTMENT AFL-CIO—(Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly furloughed Carman Painter F. C. Haenel, Columbia, South Carolina, effective 7:30 A.M., November 12, 1957, and assigned other employees to perform the Painter's work.

2. That accordingly the Carrier be ordered to recall Painter F. C. Haenel to work at Columbia, South Carolina, and pay him for all time lost subsequent to 7:30 A.M., November 12, 1957.

EMPLOYEES' STATEMENT OF FACTS: The Southern Railway System, hereinafter referred to as the carrier, operates and maintains a car repair shop and a diesel shop at Columbia, South Carolina, wherein freight cars and Diesel Locomotives are repaired and maintained.

Beginning June 24, 1937, Carman Painter F. C. Haenel, hereinafter referred to as the claimant, was employed by the carrier at Columbia, South Carolina, as a painter to perform any and all painters' work, such as cutting stencils, painting newly repaired equipment, touching up, stenciling light weights, cleaning dates, repack dates and all other work generally recognized as painter's work. The claimant's name has appeared on the seniority roster of painters at Columbia Shops in years subsequent to his employment, including the year 1958.

Effective 7:30 A.M. November 12, 1957, the claimant was laid off, as per Bulletin S-23 dated November 7, 1957.

Beginning November 12, 1957, and continuing thereafter, employees classified as car repairmen performed painters' work at the Columbia Shops, and as evidenced thereof is submitted.

"Exhibit C-1, which is a statement by Car Repairman, John H. McCullough.

Rule 149 of the shop crafts' agreement, here in evidence, defines carmen's work, which includes painting, varnishing, surfacing, lettering, decorating, and cutting of stencils, removing paint (except paint removed in vats) and all other work generally recognized as painters' work under the supervision of the locomotive and car departments. It is significant that while under Rule 30 (a), there are four sub-divisions of carmen, there is no requirement that the work be separated, it being clearly intended that there not be any prohibition against employes of the carmen's class or craft performing any and all types of work, described in Rule 149. This is clearly evidenced by the fact that during the entire period that the shop crafts' agreement has been in effect, men classified as carmen have cut stencils, stencilled dates on which cars are re-light-weighted, dates on which journal boxes have been packed and performed all painting necessary to be performed, where carmen painters have not been employed and where carmen painters are employed, but are not on duty.

That there not be any separation of work is further evidenced by the fact that Article VII of the agreement of August 21, 1954 recognizes the right of the management to utilize mechanics of one craft to perform the work of another craft where mechanics of both crafts are not employed.

The only work of the character previously assigned to and performed by Carman Painter Haenel at Columbia, South Carolina now being performed by carmen employed at that point is the stenciling of dates on which journal boxes on cars are packed, the dates on which cars are re-light-weighted, the dates on which air brakes on cars are cleaned, etc. Carmen at Columbia are not performing any work of the character formerly assigned to and performed by Mr. Haenel in the locomotive department. Work of that type is being performed elsewhere.

Then, too, as heretofore explained, carmen all over Southern Railway System lines have heretofore performed and are presently performing the stenciling of dates on which cars were re-light-weighted, dates on which journal boxes were packed, and dates on which air brakes were cleaned, etc. This is not work contracted under Rule 149 solely to carmen classified as carman painter.

On the record, the evidence is conclusive that the claimant was properly furloughed at Columbia on November 11, 1957, and therefore has no contract right to be paid the amount here demanded.

Furthermore, under Section 3, First (i) of the Railway Labor Act, the authority of the Adjustment Board is limited to deciding "growing out of grievances or out of the interpretation or application of agreement, concerning rates of pay, rules or working conditions * * * ." This being true, the Board is without authority to do what is here demanded; that is, order the carrier to recall Painter F. C. Haenel to work at Columbia, S. C., and pay him for all time lost subsequent to 7:30 A.M., November 12, 1957.

Claimant, having been properly furloughed and there being no basis for the monetary demand here made by the Brotherhood, the Board cannot do other than make a denial award.

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 weight of the evidence shows that the only work previously performed by claimant Haenel, a painter in the carman's craft, which since his furlough has been performed by other carmen who are on a separate seniority roster at Columbia, South Carolina, is the stenciling of lightweight and date freight cars are re-lightweighed, location and date freight car journal boxes are repacked, and possibly other stencil work of a similar character. Painting as such and the cutting of stencils were discontinued at this location at or prior to the time of claimant's furlough.

The subject stenciling work is not within the exclusive jurisdiction of painters in the carman's craft. The transfer of the involved work to other carman under the subject circumstances was not an agreement violation. A denial award is indicated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1960.

DISSENT OF LABOR MEMBERS TO AWARD 3512

It is not true, as the majority states, that "The weight of the evidence shows that the only work previously eprformed by claimant Haenel, a painter in the carman's craft, which since his furlough has been perafomed by other carmen . . . is stenciling . . . Painting as such and the cutting of stencils were discontinued at this location at or prior to the time of claimant's furlough." The majority admits that since claimant's furlough the work previously performed by claimant has been performed by other carmen who are on a separate seniority roster. This is a violation of Rule 30 entitled "Seniority of Employees." Rule 175 provides "Except as provided for under the special rules of each craft, the general rules shall govern in all cases." Carman Painter Haenel's seniority was established pursuant to general rule 30, and he therefore has a seniority right and preference to the work here involved.

Edward W. Wiesner

R. W. Blake

Charles E. Goodlin

T. E. Losey

James B. Zink