

Award No. 4202
Docket No. 3970
2-SOU-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement the Carrier improperly assigned and instructed Car Repairers to perform Carman Painters' work at Hayne Shop, Spartanburg, South Carolina, effective March 16, 1960.

2. That accordingly the Carrier be ordered to reassign Carmen Painters to perform the Painters' work at Hayne Shop, and pay Carman Painter R. O. Kanipe, Spartanburg, South Carolina, for eight hours at pro rata rate for March 16, 1960, and eight hours' pay for each work day, Monday through Friday, from March 16 through April 5, 1960. Also pay Carman Painter J. A. Rogers for eight hours at pro rata rate for April 11, 1960, and eight hours' pay for each work day, Monday through Friday, from April 11, 1960 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Southern Railway System hereinafter referred to as the carrier, operates and maintains a car repair shop at Spartanburg, South Carolina, wherein freight and passenger cars are repaired and maintained. Since this shop began operation January 2, 1925, carman painters have been instructed and assigned to perform necessary painting work performed in the passenger and freight car departments. Such work consisted of painting the area of the car to be covered by parts or material, and/or painting the back or hidden sides of parts or material applied, such as side sheets, center plates, patches, etc.

March 16, 1960, or shortly before, the carrier officers in charge assigned and instructed freight car repairmen to perform all necessary painting (de-

were on duty and under pay. The Division will, therefore, without passing upon the merits, dictate a like holding here."

In First Division Award 19496, Referee Royse, claim was denied by the Board holding that:

"In its Statement of Facts, respondent carrier says claimant crew was on duty at the time of the alleged violation; that the members thereof were the eye-witnesses who called the attention of the Yardmaster to the situation.

The claim in Award 18923 was denied, with findings, in part:

'... This Division has in fifteen previous awards, the latest of which are Awards 16264, 16507, and 18625, denied like claims where claimants were on duty and under pay. The Division will, therefore, without passing upon the merits, dictate a like holding here.'

"The same principle was applied in denying the claim in Award 13554, BRT vs K&IT, the same parties as here.

The excerpted portion of the findings from Award 18923 is applicable; the claim is denied without passing upon the merits."

CONCLUSION:

Carrier has shown that:

(a) It did not improperly assign and instruct any carmen to apply chromate primer to parts, patches, splice plates, etc. applied by them and the claim is not supported by the effective agreement. No work has been or is being performed by carmen in contravention of the agreement.

(b) Similar claims have been denied by the Board.

(c) The Board is without authority to do what is here demanded.

(d) Prior Board awards have denied claims where claimant worked during period involved in claim.

As the Board is without authority to do what is demanded in part 2 of the claim, that part should be dismissed by the Board for want of jurisdiction. However, if, despite this fact, the Board assumes jurisdiction over both parts of the claim, it 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.

Parties to said dispute were given due notice of hearing thereon.

At Hayne Car Shop, Spartanburg, S. C., Carrier conducts what may be termed a modern assembly-line freight car rebuilding and repair operation. Among the exhibits in the docket, a schematic drawing of Hayne Car Shop indicates the course travelled by cars to be repaired or rebuilt en route through the shop. At various points along this route, Carman painters are employed in doing most of the car painting; however, at other points, immediately before carmen apply or affix various parts, patches, splice plates, etc., in the course of the car rebuilding or repairs, they brush chromate primer onto the back side of such parts, etc., which are to come into contact with the car, this, so as to keep them from deteriorating and to lengthen their life. It is this brushing on of the chromate primer by carmen rather than by carmen painters which Claimants allege was a violation of the current agreement and filing of the claim set forth herein above.

The portion of Rule 30 of the applicable agreement (Revised effective May 1, 1952) which is cited for our consideration reads as follows:

“(a) Except as otherwise provided, seniority of employees in each craft covered by this agreement shall be confined to the Master Mechanic’s jurisdiction in which employed in each of the following departments:

* * * * *

“Four subdivisions of the Carmen as follows:

Patternmakers

Upholsterers

Painters

Other Carmen.”

We are also referred by the parties to Rule 149, the applicable portion reading as follows:

“Carmen’s work shall consist of building, maintaining, dismantling, painting, upholstering, and inspecting all passenger and freight cars, both wood and steel, * * * pattern and flask making * * * painting, varnishing, surfacing, lettering, decorating, and cutting of stencils; removing paint (except paint removed in vats); all other work generally recognized as painters’ work under the supervision of the locomotive and car departments; * * * and all other work generally recognized as carmen’s work.”

Claimants maintain that application of chromate primer as above described falls within the definition of “painting” and that the work of so doing belongs to carmen painters, not to carmen. Carrier contends that such work is not painting in the strict sense of the word and that it is not exclusively reserved to carman painters, but as a matter of custom and practice throughout the years has been done by carmen, other than carmen painters. By way of evidence in this regard, Carrier submitted some sixteen affidavits which had to do with the work of applying chromate primer to many varieties of car parts

during their building, rebuilding or repair in various shops along its system, all of which evidenced the fact that such work was there done by carmen other than carman painters. It is interesting to note that one of said affidavits sets forth: "cars were built from the ground up and there were buckets of primer placed all up and down the line which carmen used for priming all parts that were lap jointed together. It has been a practice at this shop for carmen to prime new material that was to be applied to a car. This practice has been in effect for many years." Several affidavits stated that carmen painters were on duty in other areas of the shops concerned but were not used for this chromate primer work. "Moreover they were not readily available at this locality in the shop area." This last is readily understood in studying the schematic drawing mentioned above where it may be observed that the distances from one repair or rebuilding operation to another may be very considerable—the portion of the plat in that particular regard indicating more than one-eighth of a mile from the beginning to the end of such operations and also very considerable distances to where carmen painters are steadily employed in other phases of the rebuilding and repairing of cars.

We have carefully reviewed the submissions and briefs of the parties as well as the oral arguments made in their behalf and the various awards cited by them. Of the latter the factual situation dealt with in Award 3928 of this Division approximates most closely that which we are here considering and in its reasoning is the most persuasive as to the problem here involved. Here we have also what is essentially the non-skilled application of chromate primer as part of a fabricating, manufacturing, rebuilding or repair process and it is not the work, process or art of painting.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1963.

DISSENT OF LABOR MEMBERS TO AWARD 4202

In the present instance a studied attempt has seemingly been made to ignore the controlling agreement. The majority states "Carmen painters are employed in doing most of the car painting; however at other points, immediately before carmen apply or affix various parts . . . they brush chromate primer onto the back side of such parts . . . so as to keep them from deteriorating and to lengthen their life . . ." Even assuming that carmen do such work at other points on the railroad (it is denied in the employees' submission) does not estop the Organization from now enforcing the agreement. Furthermore, it is generally known that a primer is for the purpose of laying the first color, coating, or preparation upon a surface as in painting. Painting a surface is for the purpose of decorating, PROTECTING, or both and the majority admits that the primer is for the purpose of keeping the parts to which applied from deteriorating, in other words for the purpose of protecting those parts. Thus the instant operation constitutes a type of painting which, under the express provisions of the controlling agreement, is carmen painters' work. There is no

basis whatsoever for the finding that the application of chromate primer is “not the work, process, or art of painting.”

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink