

**Award No. 4384**

**Docket No. 4200**

**2-GN-CM-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**GREAT NORTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That the Carrier violated the current agreement when they assigned other than Carman Painters to paint and stencil code markers which are used in the Stores Department.
2. That accordingly, the Carrier be ordered to compensate Carman Painter Roy Phillipy, from August 1, 1960 through August 9, 1960, in the amount of 56 hours, and each day thereafter that this violation takes place.

**EMPLOYEES' STATEMENT OF FACTS:** The Great Northern Railway Company, hereinafter referred to as the carrier, maintains at its Hillyard Shop, Spokane, Wash., a regular force of car department painters.

The Carmen painters are listed on a separate seniority roster, and Carman Painter Roy Phillipy, hereinafter referred to as the claimant, is listed as number 2 painter with a seniority date of November 3, 1922.

On August 1st, 1960 it was detected that Stores Department Laborer Robert Carlton was painting and lettering code numbers on classification markers for lumber piles.

On August 10th, 1960 time cards were submitted to Work Equipment Shop Foreman Bert Green and were rejected on the grounds that Rule 83 did not cover employees in his department.

On August 24, 1960 time cards were submitted to Car Foreman H. F. James and returned the same date stating that this matter was out of his jurisdiction.

On August 29th, 1960 time cards were submitted to General Foreman P. L. Sowa and declined on September 2, 1960 with the statement that this matter was out of his jurisdiction.

All of the evidence and data contained herein has been presented to the duly authorized representatives of the employees.

**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.

The Organization argues that the Carrier violated Article V of the August 21, 1954 Agreement and that the claim of Carman Painter Phillipy for pay for 56 hours should be allowed for this reason as well as on the merits. Article V provides:

" \* \* \* Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance."

Briefly and chronologically we shall discuss the exchanges of pertinent correspondence submitted by the parties in their Submissions to this Board.

Exhibit "A" of the Organization is a letter from the Local Chairman to Car Foreman James, dated August 24, 1960, which states that Work Equipment Shop Foreman Green, on August 10, 1960, rejected claimant's request for 56 hours pay because "Rule 83 did not cover employes in his department, hence this appeal to you." Exhibit "B" of the Organization is a letter, also dated August 24, 1960, from Car Foreman James to Local Chairman Vanderberg stating that the matter is outside the Car Foreman's jurisdiction and suggests taking the matter up with P. L. Sowa, who the facts show, was the next higher authority.

The Carrier's Exhibit C-3 is a letter from Local Chairman Vanderberg to General Foreman Sowa, dated August 29, 1960, this letter is a request for pay for the 56 hours claimed by Carman Painter Phillipy. Exhibit C-4 of the Carrier discloses that General Foreman Sowa also rejected the claim when, on September 2, 1960, he stated that he "must decline this request as same is out of my jurisdiction;" a copy of his letter was sent to Shop Superintendent Tausch.

On September 20, 1960, Local Chairman Vanderberg requested that Shop Superintendent Tausch pay the claim in question (Carrier's Exhibit C-5). This request was denied by Mr. Tausch on September 21, 1960 (Carrier's Exhibit C-6), and in his reply, inter alia, he stated "There is nothing in Rule 83 that specifically gives this work to the Carmen's Craft." On November 8, 1960 the General Chairman claimed that by reason of the Carrier's violation of Article V, quoted above, the requested 56 hours pay for Carman Painter Phillipy should be paid (Organization's Exhibit "C"); however, his subsequent letter which appealed the disallowance of the claim to the highest official of the Carrier, failed to request payment of the claim as a vio-

lation of Article V; this letter said that the incidents surrounding the claim were a violation of Rule 83. (Carrier's Exhibit C-9).

The facts discussed above constrain us to find that the Carrier did not violate Article V of the August 21, 1954 Agreement, therefore we must proceed to the merits of the claim for its disposition.

The Organization's Submission contained nine statements, Exhibits G-1 through G-9, from Carmen Painters. These statements were not considered by the Board because they were not presented to, or discussed with the Carrier on the property.

The facts in this Award show that Carman Painter Phillipy claims pay for 7 days, or 56 hours, during the period August 1 to August 10, 1960, for work performed by Store Department Laborer, Robert Carlton, when he (Carlton) painted signs which were to be used in marking lumber piles of the Store Department and each day thereafter that this violation takes place. It was stated, and conceded, that Store Department employees had performed this work in the past, likewise, and dependent upon availability, the Carmen Painters had also painted some of the type of signs that are involved herein.

The Organization relies upon Rule 83 and states that this rule when construed in light of the Preamble gives Carmen Painters the exclusive right to perform the painting work of all departments except where such work would be covered by other Agreements.

Prior Awards of this Division and the Third Division are to the effect that when the work involved is an integral part of the process being performed (Award 3928—Second Division) or incidental and secondary to a primary objective (Award 10024—Third Division) — then such work is usually considered as being outside of the scope rule to the extent that no craft can lay claim to it and exclude all others. The facts before us are that Store Department employees for many years had painted the type of signs involved herein. We believe that the work involved in this dispute was incidental and secondary to the objective of the Store Department and further we think that as an integral part of the Stores function it is, in light of past practice, well founded that Store Department personnel can paint marker signs for lumber piles.

In view of the absence of convincing proof from the Organization that Rule 83 of the Agreement granted to Carmen Painters the exclusive right to paint all marker signs of the Store Department and for the reasons given in the preceding paragraph we are of the opinion that the claim should be denied.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1964.

**DISSENT OF LABOR MEMBERS TO AWARD 4384**

The exhibits which the majority refused to consider accompanied the Employees' Submission, thus permitting their rebuttal by the carrier, and should therefore have been considered by the Division.

The majority cites a Second Division Award to the effect that when the work involved is an integral part of the process being performed or incidental and secondary to a primary objective then such work is usually considered as being outside of the scope rule to the extent that no craft can lay claim to it and exclude all others. This Division has repeatedly held that painter's work cannot properly be performed by employees not under the Carmen's Agreement when a painter is available. (See Awards 1269, 1799, 2214, 3405, 3406 and 3410 and 4085).

There is no evidence in the record to support the holding of the majority that "The facts before us are that Store Department employees for many years had painted the type of signs involved herein."

In view of the erroneous findings we are constrained to dissent therefrom.

C. E. Bagwell  
T. E. Losey  
E. J. McDermott  
R. E. Stenzinger  
James B. Zink