

Awad No. 4591
Docket No. 4418
2-GN-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than Carmen Painters are being improperly assigned to stencil light weights on cars at Hillyard Shops, Spokane, Washington.

2. That accordingly the Carrier be ordered to compensate Carman Painter Douglas C. Vanderberg for a total of 95 hours from June 1, 1961 to July 28, 1961.

EMPLOYES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the carrier, maintains car repair facilities at Hillyard, Spokane, Washington. The car forces located in the Hillyard shop and yard area consist of four groups, even though all of the car forces are consolidated onto one seniority roster. These groups consist of:

(1) Car Shop Forces:

This force is employed in the heavy repair car shop located west of the yard.

(2) Repair Track Forces:

This force reports to work and is primarily employed at the repair track area adjacent to the car shop.

(3) Commodity Inspectors

This force reports to work and is primarily employed at the washout track located along the south side of the yard.

(4) Train Yard Inspectors

These forces report to work at the car inspectors' building near the lower yard office located at the middle of the yard and work at all points in the yard.

8. An essentially identical case which arose on another property under similar rules was denied by this board in Award No. 3512.

9. The organization has admitted that carmen-painters have no exclusive right to the work involved in this case by unsuccessfully attempting to negotiate a change in the practice at Hillyard on several previous occasions.

For the foregoing reasons, the carrier respectfully requests that the claim of the employees 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.

Parties to said dispute waived right of appearance at hearing thereon.

Carman Painter, Douglas C. Vanderberg, who has a seniority date of April 8, 1949, works at the Carrier's Freight Car Heavy Repair Shop at Hillyard, Washington.

The Claimant's job duties reportedly consist of painting heavy repair cars and putting the requisite stenciling markings thereon.

All of the Carmen at Hillyard are on the same seniority roster except carmen painters, who are on a separate seniority roster.

On a number of specified dates Car Inspectors reportedly did the stencilling work on a number of cars in the Train Yards.

Rule 83, the Classification of Work Rule, of the controlling Labor Agreement reads, in pertinent part, as follows:

"Carmen's work shall consist of * * * painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint * * *."

Rule 42(e) reads as follows:

"When the service requirements do not justify the employment of a mechanic in each craft, the mechanic or mechanics on duty will, so far as they are capable, perform the work of any other craft that may be necessary. In the event a question arises as to the practical application of this rule, a joint check shall be made when so requested by the General Chairman."

The Organization contends that the rules of the controlling Agreement reserved to the painters the work involved in this claim and the use of carmen to perform this work constitutes a violation of those rules.

The Carrier contends that its action is supported by Rule 42(e), past practice, and the fact that the "painting of such reweigh markings is ordinarily

performed by car inspectors incidental to their other work when the cars are set out in the train yard or at the washout track”.

This Board cannot accept the contentions of the Carrier because:

1. Rule 42(e) is not applicable, because Carmen Painters were regularly employed and were available at Carrier's Hillyard facility;
2. Past practice does not now estop the Organization from enforcing a contractual provision;

In Second Division Awards 1898 and 2210 the Board held that:

“Consent and practice cannot be considered as an agreed interpretation of the rule, since the rule is too plain to require or permit such interpretation * * *.”

3. Rule 83 clearly defines the work involved as belonging to the craft of Carmen Painters.

AWARD

Accordingly, the Board must rule as follows:

Part 1 of Claim — Sustained.

Part 2 of the Claim — Sustained but without retroactive effect prior to November 14, 1964.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1964.