

**Award No. 4665**

**Docket No. 4497**

**2-B&O-CM-'65**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

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

---

**PARTIES TO DISPUTE:**

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

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement the Carrier improperly assigned and used Car Repairers to perform Carmen Painters work at the Glenwood Car Shop Pittsburgh, Pa. on date of September 8, October 13 and 19, 1961.

2. That accordingly, the Carrier be ordered to additionally compensate the following named Carmen Painters each in the amount of eight (8) hours for the dates listed opposite their respective names.

D. Zumbo .....	9- 8-61
J. Barrilla .....	10-13-61
P. Provident .....	10-19-61

**EMPLOYEES' STATEMENT OF FACTS:** The above named men, hereinafter referred to as the claimants, are employed by the Baltimore and Ohio Railroad Company, hereinafter referred to as the carrier, as carmen painters regularly assigned as such at carrier's Glenwood Car Shop, Pittsburgh, Pennsylvania and constitute the rostered employes coming under the Sub-division of Painters in the carmen's craft at that point.

In the Pittsburgh yard on September 8, 1961 Car Inspector F. Melodini and W. Jacesko were instructed to paint the roof of Coach 5228, spending eight (8) hours each in so doing.

On October 13, 1961 Carman W. Cochran was instructed to report to the roundhouse to paint diesels, spending his full tour of duty performing this work.

On October 19, 1961, Carman W. Jacesko painted Office Car No. 98 by

reservation of the work of painting on this property to so-called "Painters." There are no defined duties of so-called "Painters" in the shop crafts agreement. The work now complained of in this dispute has been performed by carmen on this system for years. It has been performed at **virtually all points** on the property of this carrier without protest from the organization.

The carrier submits that the claim in this case is without merit in both parts 1 and 2. The carrier submits that the claim in this case in its entirety should be denied. The carrier respectfully requests that this division so rule and that the claim in its entirety 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 were given due notice of hearing thereon.

The Organization alleges that the Carrier improperly assigned and used Car Repairmen to perform Carmen Painters work at the Glenwood Car Shop, Pittsburgh, Pa., on 9/8, 10/13 and 10/19/61. As the result of this action, since there was a separate car painter's seniority roster at this point, the work should have been given to three named employes for whom claim for additional compensation is being made.

In support of its position the Organization cites Second Division Award 4085 which states in pertinent part as follows:

This Division has repeatedly held that painters' work cannot properly be performed by employes not under the Carmen's Agreement when a painter is available. Awards 1269, 1799, 2214, 3406 and 3410." (Emphasis ours.)

The Carrier's submission includes the following:

"The painting work in question had to be performed during hours when there was sufficient lighting. The yard at this point where the work was performed is either not lighted at all or at best is poorly lighted for painting work. Certainly this yard is not lighted for painting work to be done during the dark or dusk hours."

At the time of the claims all Carmen-Painters on the Roster were working full time and they therefore were not "available" to perform this work during the regular hours of their assignment since they were all fully occupied. There were no rest days involved in this case and the work could not be done on an overtime basis.

It is significant to note that the Organization has not denied the above statements made by the Carrier and failing to deny them they stand as admitted.

From the foregoing it is clear that the claimants were not "available" and, under the circumstances, the Carrier did not violate its Agreement.

## AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: William B. Jones  
Chairman

E. J. McDermott  
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.

DISSENT OF LABOR MEMBERS TO AWARD No. 4665

The holding of the majority that “. . . the work could not be done on an overtime basis” is not in accord with the facts in the record. The work involved in the instant case should have been performed by carmen painters and the overtime distributed among them equally as provided in Rule 8 of the controlling agreement. (See Award 1519)

Furthermore, in stating that the organization has not denied statements made by the Carrier and thus such statements stand as admitted, the majority seemingly overlooked the “Conclusion” in the Employes’ Rebuttal wherein “All allegations or implications of the Carrier designed to support their position not heretofore specifically answered are emphatically denied . . .”

Carmen do not have any right under the present factual situation to perform the work of carmen painters. The claimant carmen painters were “available” and the carrier in not assigning them to the instant work violated the controlling agreement.

**E. J. McDermott**

**C. E. Bagwell**

**T. E. Losey**

**Robert E. Stenzinger**

**James B. Zink**