

Award No. 4691
Docket No. 4471
2-NYC-CM-'65

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. 103, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

THE NEW YORK CENTRAL RAILROAD, WESTERN DISTRICT

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier violated the controlling agreement particularly Rule 154 of the Carmen's Special Rules, when for a period from October 13, 1960 through November 1, 1960, it assigned employes other than carmen to carmen painters' work which under said rule by agreement was within the job classification of the Carmen.

2. That the Carrier be ordered to pay employes Paul Balchitis, George Klievo, Joe Passwella, Louis Gurotto and John Peterson on the basis of thirty-two hours at time and one-half for each 24-hour period in which said work was performed.

EMPLOYES' STATEMENT OF FACTS: For a period of October 13, 1960 through November 1, 1960, the carrier assigned one stationary engineer, and one fireman 8 hours each day 7 A. M. to 3 P. M., Monday through Friday, one stationary engineer 8 hours each day 3 P. M. to 11 P. M., Monday through Friday, and one stationary engineer 8 hours each day 11 P. M. to 7 A. M., Monday through Friday, also one relief stationary engineer and one relief fireman, Saturday and Sunday, to perform carmen painters' work consisting of painting all pipes, machinery, etc., directly involved in the operation of boilers, pumps and compressors at the Root St. Power Plant.

The dispute has been handled with carrier officials designated to handle such affairs who all declined to adjust the dispute.

The agreement effective July 16, 1946, as subsequently amended, is controlling.

POSITION OF EMPLOYES: The controlling agreement between System Federation No. 103, Railway Employees' Department and the New York Central Railroad contains the following scope on page 1:

"It is understood that this agreement shall apply to those who perform the work specified in this agreement in the maintenance of

The actual manhours spent by the power plant employes total 144; yet the **carmen are claiming a total of 608 manhours to be paid to the five (5) claimants** who were regularly employed in Root Street Car Department. In addition, they request payment of these hours at time and one-half rate of pay, notwithstanding that many awards of this board have denied such claims at punitive rate of pay for work not performed.

CONCLUSION: The "color code" painting performed by power plant personnel was a safety measure for their benefit. The painting to "color code" during their tour of duty was work incidental thereto and did not violate Rule No. 154 of the shop crafts agreement. The claimants are not entitled to the compensation which they claim.

Therefore, the carrier submits that your board should deny the claim of the organization in this matter.

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.

Inasmuch as the requirements of Section 3, First (j) of The Railway Labor Act, pertaining to third party notice, have been complied with—this dispute may not properly be considered on its merits.

During the period from October 13, 1960 through November 1, 1960, the Carrier assigned Power Plant employes to the work of painting pipes, machinery and equipment at the Root Street Power Plant, Chicago, Illinois.

The Organization contends that in keeping with the language of Rule 154 of the controlling Labor Agreement, as well as with past practice, such painting comes within the job classification of Carmen Painters, and that the Carrier violated the Labor Agreement when it assigned such work to employes subject to the Firemen and Oilers' Labor Agreement. The Organization further contends that there was a regular 7:00 A. M. to 3:00 P. M. shift of Carmen Painters at the Root Street Passenger Yard.

The Carrier contends that "Power Plant employes are responsible for the maintenance and operation of the equipment in a safe, efficient and clean condition and it has been the practice on this property for Power Plant employes to do work incidental to duties of their positions". The Carrier further contends that the Organization's time claim of 608 manhours at time and one half is unreasonable, because it took only 144 manhours to do the work in question.

The pertinent part of Rule 154 reads as follows:

"CLASSIFICATION OF WORK

(a) Carmen's work shall consist of . . . painting . . . painting with brushes . . . cutting stencils and removing paint . . . all other work generally recognized as painters' work under the supervision of the locomotive and car departments . . ."

The pertinent provisions of Rule 154 *supra*, unmistakably allot certain painting duties to Carmen Painters. Moreover, the record reveals that Carmen

Painters have performed painting work in the Power House at various times. The record also reveals that the Root Street Power Plant is under the jurisdiction of the Car Department. Therefore, it logically follows that the work in question was rightfully the work of Carmen Painters, and that the Carrier's action violated the controlling Labor Agreement.

Whereas there is no evidence to support the 608 manhours' claim of the Organization, there is a Carrier admission that the work time averaged two hours per man or 8 hours each 24 hour period for a total work time of 144 hours. This information is substantially supported by Exhibits attached to the Organization's Rebuttal. Accordingly, the Board rules that a total of 144 hours' pay at the proper pro-rata-rate, shall be properly divided among the Claimants named in Part 2 of the claim.

AWARD

Claim 1 sustained.

Claim 2 sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1965.