



Award No. 5811

Docket No. 5688

2-PC(NYNH&H)-CM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Carmen)**

**PENN CENTRAL TRANSPORTATION COMPANY
(The New York, New Haven & Hartford Railroad Co.)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the current agreement was violated when the Carrier assigned an Engineer and an Oiler to perform painters work on Tug Boat 23 on October 15, 24, 25, 26, 27, 28, 31 and November 1, 1966.
2. That accordingly the Carrier be ordered to additionally compensate Painter J. J. Duff in the amount of hours at time and one half rate equal to the number of hours worked by the Engineer and Oiler on the afore mentioned dates.

EMPLOYEES STATEMENT OF FACTS: The Painter J. J. Duff is employed as a painter in the Harlem River Marine Shop and will hereinafter be referred to as the claimant. His duties are the painting of all marine equipment during the hours 8:00 A.M. to 4:00 P.M. with Saturday and Sunday rest days.

The Harlem River Marine Shop is maintained and operated by the New York, New Haven, and Hartford Railroad Company hereinafter identified as the Carrier.

On the above mentioned days the enginer and oiler performed painters work on Tug Boat 23.

The agreement effective September 1, 1949 as subsequently amended is controlling.

POSITION OF THE EMPLOYEES: It is submitted that the foregoing statement of dispute is conclusively supported by the current collective agreement negotiated in accordance with the Railway Labor Act as amended, because the work is covered in carmen's classification of Work rule 107 which for ready reference reads in part as follows.

"Carmen's work shall consist of building, maintaining dismantling (except all wood freight and passenger train cars) painting — and all other work generally recognized as Carmen's work and including

Under this rule of the shop crafts agreement, it is entirely permissible for the engineer and/or fireman (oiler) to have performed any repairs which they were qualified to perform.

We respectfully submit that the claim of Mr. Duff should 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.

In Fall 1966, while Tug Boat No. 23 was laid up for an extended period at the Carrier's Harlem River Marine Department Repair Shop the Marine Engineer and Oiler painted her engine room hull, boiler and auxiliaries. This work was performed on eight days in October and November. At the time, Claimant J. J. Duff was employed as a Painter at the Harlem River Repair Shop.

It is Petitioner's contention that Claimant, rather than the Marine Engineer and Oiler, should have performed the painting work in light of:

(1) Work Rule 107, which declares in part that:

"Carmen's work shall consist of . . . painting . . . and all other work generally recognized as carmen's work and including the following classification in shipyard . . . Painters."

(2) The Marine Engineers Beneficial Association's and the Transport workers' Union's acknowledgement that painting does not fall within the jurisdiction of Marine Engineers or Oilers, respectively.

(3) Rule 29 which provides in part that:

"None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed."

Carrier does not contend that painting is a part of Oilers' or Marine Engineers' duties. Such men, however, are responsible for keeping the engine room in good condition, it asserts. More importantly, Carrier relies on Rule 58 to support its painting assignment here. This Rule declares that:

"These rules shall not be construed to prevent engineers, firemen and crane men of steam shovels, ditchers, clam shells, wrecking outfits, pile drivers and other similar equipment requiring repairs on line of road from making any repairs to such equipment as they are qualified to perform.

"(Effective August 5, 1945)

"Tugboats and other floating equipment, their engines and auxiliaries while in stream or laid up for repairs or awaiting service."

Since painting constitutes maintenance work, as do other repairs, Carrier affirms, it was permissible under Rule 58 to have the Engineer and Oiler perform such painting as they were qualified to do.

* * *

It is apparent that, under Rule 29, painting — which is mechanics' work as defined in Rule 107 — shall be performed only by "mechanics or apprentices regularly employed as such" with certain exceptions not here relevant. Painting in ship yards is specifically referred to in Rule 107. Under normal circumstances, consequently, one would expect that a Painter would be assigned to paint an engine room hull, or the like, on a tug boat laid up at the Repair Shop. Since there is no contention here that other crafts, such as Oilers or Marine Engineers, have a contractual right to such painting work, nor is it part of their regular duties, the key question is whether, under Rule 58, the disputed assignment was proper.

The record is devoid of any information concerning the contractual origin of this Rule or the background of negotiations. There are no Board decisions on this or similar rules (if, indeed, such exist). The analysis is not simplified, moreover, by the fact that the key second paragraph does not even constitute a grammatical sentence. It is a phrase without a verb; it leaves unclear whether the subject is tugboats, engines and auxiliaries, or some group of employees. If the phrase means that certain employees may be permitted to perform certain work, which employees does it refer to? The engineers, firemen and crane men mentioned in the first paragraph: But these men are railroaders, not tugboat personnel. Does the phrase pertain to some other group of men? If so, which ones?

Without the answers to these questions — and the record provides none — it is not possible to sustain Carrier's position since there is nothing in the Agreement which provides that a Marine Engineer or Fireman may do painting or related work. Even were we to grant, for the sake of argument, that the second paragraph of Rule 58 allows some persons other than Carmen to do certain work on a tugboat, the Carrier's position would not necessarily be upheld. The first paragraph, which the second appears to modify, declares that the listed men shall not be prevented "from making any repairs" under Rule 58. In fact, there is no evidence that the type of painting here in dispute was ever performed by other than Painters. (A 1957 Painter's grievance was dropped when the Carrier asserted that the engine room had not been painted, but only "spotted where the original paint was bruised", a task requiring about 40 minutes.)

Note, moreover, that Rule 58's first paragraph was clearly not intended to replace or be a substitute for Rules 29 and 107. Rather, it provided for an exception to the general rules regarding assignment of carmen's work. Yet, of the Carrier position here is sustained, the second paragraph of Rule 58 would, in effect, constitute an amendment of Rules 29 and 107 in that maintenance work on tugboats would be performed by other than Carmen under any circumstances; e.g., while the boat was in stream, awaiting service, or laid up for repairs. Without convincing evidence concerning the parties' mutual intent — and there is none in this record — we are not prepared to conclude that such a broad modification of Carmen's Rule 29 and 107 rights was envisaged.

In light of these considerations, Petitioner's first claim will be sustained. The second claim will be sustained to the extent that Mr. Duff shall be

compensated for the hours in question at the pro rata, rather than time and one-half rate.

A W A R D

1. Claim 1 is sustained.

2. Claimant, J. J. Duff shall be compensated at the pro rata rate for the number of hours equal to those worked by the Marine Engineer and Oiler on October 15, 24, 25, 26, 27, 28, 31 and November 1, 1966.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1969.