

Award No. 6205
Docket No. 6056
2-CSS&SB-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO (Carmen)
CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago South Shore & South Bend Railroad, hereinafter referred to as the Carrier, allowed Foreman D. Manske to perform the work of the Carman's Craft in violation of Rule 24 of the current working Agreement.

2. That the Carrier be ordered to pay Carmen John R. Tolman and Lawrence A. Kraemer, hereinafter referred to as the Claimants, eight (8) hours' pay at the pro rata rate of pay for each of the following dates in 1969:

Claimant Kraemer, February 17, 25, 28; March 10, 31; April 2, 8, 15.

Claimant Tolman, February 24, 26; March 3, 5, 11, 21; April 1, 7, 9, 17.

3. Claimant Kraemer to be paid four (4) hours at the pro rata rate for April 23, 1969.

EMPLOYEES' STATEMENT OF FACTS: This claim has been handled by correspondence and conferences up to and including the highest carrier official designated to handle claims. After several conferences and much serious discussion with Mr. H. G. Doyle, Superintendent Mechanical Department, he agreed to and did send notice to Shop Foremen dated March 24, 1969, advising them of the organization's complaint about Foremen performing work in violation of the current working agreement. The agreement effective January 16, 1943, as subsequently amended is controlling.

POSITION OF EMPLOYEES: Rule 24, Assignment of Work, reads as follows:

"None but mechanics or apprentices, regularly employed as such, shall do mechanic's work as per special rules of each craft.

This does not prohibit foremen in exercise of their supervisory duties to perform work."

The claims 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.

On the basis of the entire record, the Board finds that performance of the work of painting by a Painter Foreman of a building, some distance from the crew said Foreman was supervising, was violative of Rule 24, cited as follows:

“None but mechanics or apprentices, regularly employed as such, shall do mechanic’s work as per special rules of each craft.

This does not prohibit foremen in exercise of their supervisory duties to perform work.”

However, the Board also finds that for at least three decades Painter Foremen performed work, and that no grievance or complaint was made by the Organization regarding such a practice.

For this reason, and because there is no claim or allegation that Claimants suffered any loss in compensation as a result of said violation, and because Carrier has positively responded to the basic thrust of the Organization’s complaint by issuing a memo, Employee Exhibit 1, to all Shop Foremen directing them to be “governed” by Rule 24, this Board is not disposed to sustain the claims for payments set forth in claims two and three.

AWARD

Claim One sustained.
Claims Two and Three denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1971.