

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6684  
SECOND DIVISION Docket No. 6455  
2-C&O-CM-'74

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

Parties to Dispute: ( System Federation No. 41, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( The Chesapeake and Ohio Railway Company  
( (Chesapeake District)

Dispute: Claim of Employees:

1. That Freight Car Painter, C. V. Stith's service rights and rules of the Shop Crafts Agreement were violated October 5, 1971, account the Carrier abolishing the painter job and transferring said painter work to the carmen in violation of Rule 32. Carmen's Special Rule 173 and Supplement No. 5 of the Shop Crafts Agreement.
2. Accordingly, Freight Car Painter Stith is entitled to be compensated eight (8) hours at Freight Car Painters applicable straight time rate for October 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29; November 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30; December 1 and 2, 1971, and each day thereafter, five (5) days each week until said violation is corrected and the painter is recalled to perform said painters work.

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.

We find that we are unable to reach consideration of the conflict concerning whether or not there was "sufficient work to justify employing a mechanic of each craft" (in this case, the painter craft) and whether or not such circumstances justified the designation of either painters or carmen "to perform the available work" because Rule 32 (c) from which the quoted language is taken and which expresses just such conflict as is the substance of the instant claim, was not preliminarily invoked and utilized by Employees.

It must be noted that Rule 32(c) holds open the possibilities that there may or may not be sufficient work to employ a mechanic of a particular craft. It must be assumed that in writing this the parties had in mind other than a positive assurance that any degree of work no matter how small is guaranteed to be assigned exclusively to a particular craft. As to whether (a) that work diminishes to a point at which it may properly be absorbed as incidental activity of another craft and (b) whether the craft to which so assigned is the rightful recipient of that work (whether by traditional functional overlap or because the work is so minimal in nature or for other reasons) is a subject which the parties have agreed to mutually examine as part of their survey before resorting to the claims appeal machinery. Employees have failed to join in such efforts here.

Employees' contention that the procedure provided for in Rule 32(c) was too cumbersome and impracticable in this instance is one which this body is without authority to pursue. We have no power to amend or qualify that to which the parties have mutually committed themselves.

Accordingly, in accord with Awards No. 6563, 6564, 6565, 6566 and 6569 involving the same parties, the claim must fall.

A W A R D

Claim of Employees denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
(Rosemarie Brasch - Administrative Assistant)

Dated at Chicago, Illinois, this 26th day of April, 1974.