

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 121, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(The Texas and Pacific Railway Company

Dispute: Claim of Employee:

1. That the Carrier improperly used Carmen A. S. Holloway and J. Parma to perform Painters' work on the Speed and Heavy Repair Tracks November 19, 1972.
2. That accordingly, the Carrier be ordered to additionally compensate Painter E. F. Findley, Jr. in the amount of eight (8) hours at the time and one-half rate of pay, November 19, 1972.

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.

Claimant is the regularly assigned Painter at Carrier's Fort Worth, Texas Mechanical Department assigned to the first shift with rest days of Saturday and Sunday. These rest days are filled by Painter Benavides. On Sunday, November 19, 1972 Benavides was on vacation and no Painter was assigned this day to fill his position. On this date, Carrier used Carmen to paint out old air and packing dates and stencil in new ones. It is the Organization's contention that these Carmen performed this work in contravention of the parties Agreement, and that claimant, who was off duty and available for service, should have been called to perform it.

Carrier denied the claim maintaining that the work of stenciling air and packing dates is not work reserved exclusively to Painters, and that it can assign such work to Carmen on days or shifts on which there is no Painter assigned at the Centennial Yard Car Shop. And since there was no Painter on duty November 19, 1972 Carrier concluded that it could assign Carmen the work in question.

It should be noted at the outset that while Painters are part of the Carmen's craft they are placed on a separate seniority subdivision and a separate seniority roster in accordance with Rule 21 of the effective Agreement. And, the Organization insists, the work in question is reserved to Painters through application of Rule 83, the Classification of Work rule.

Although the parties have cited Rules 21, 22, 83 and Articles 6 and 12(b) of the Vacation Agreement in support of their respective positions we do not believe they are determinative of the issue at hand. Rather, it is our opinion that the Letter of Understanding dated June 12, 1962 between Mr. G. R. French, Director of Personnel and General Chairman Y. L. Crumpton specifically addresses the issue now before us for determination.

Said agreement provides that at Carrier's Car Shop at Fort Worth, on shifts where painters are assigned that the work of stenciling air dates would be performed by painters, whereas on days or shifts on which there is no painter assigned carmen other than painters will be used to paint out old air and packing dates and stencil new ones. Therefore, proper disposition of this claim hinges on the question whether a Painter was assigned at the Fort Worth Car Shop November 19, 1972?

We agree with the Organization that Painter Benavides was assigned to Carrier's Fort Worth repair track on November 19, 1972, although admittedly he was on vacation that date. The local Agreement of June 12, 1962 allows Carrier to use a Carman to stencil air dates only when a Painter is not assigned. It does not allow Carrier to do so merely because a Painter is not "on duty". While to some this might appear to be a distinction without a difference, the parties, we must assume, knew the meaning of the words they employed when drafting the Understanding. If they had intended that a Carman could be used when a Painter was not on duty, then it was incumbent upon them to include in the agreement language to this effect. Since there was a Painter assigned to work on the Speed and Heavy Repair Tracks at Fort Worth, 7 days per week on the first shift, any stenciling of air dates during this period is contractually reserved to Painters.

While this Board concedes that the work of stenciling air dates is not reserved exclusively to Painters, we nonetheless conclude that Carrier has curtailed its right to use Carmen to perform said work when they entered into the June 12, 1962 local understanding. This agreement pertains specifically to Lancaster car shop (now Centennial Yard car shop) where the work in question was performed, and thus renders inapplicable Second Division Awards 6618 and 6422 relied on by Carrier.

Since there was a Painter assigned on the first shift November 19, 1972, the local agreement dated June 12, 1962 precluded Carrier from using a Carman to stencil air dates. We shall therefore sustain the claim but at the pro rata rate.

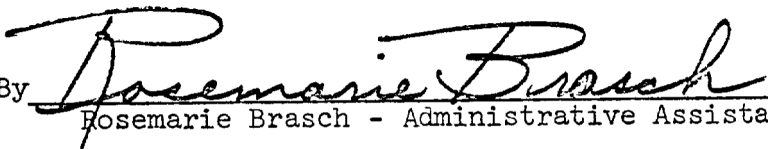
A W A R D

Claim sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February, 1975.