

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement, particularly Rules 117 and 26(a) and Decision dated May 12, 1954, when employes from Shepard Paint Company were assigned to perform carmen painters' work at the Crest Building, North Little Rock, Arkansas, on December 19 and 20, 1974.
2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carmen Painters H. W. Palmer and F. Hood in the amount of twenty-two hours (22') each at the pro rata rate for December 19 and 20, 1974.

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 December 19 and 20, 1974 other than Carmen Painters were used to paint office desks at the Crest Office Building at the North Little Rock Terminal. The painters used on these dates were from an outside firm, the Shepard Paint Company.

The Organization contends that the work in question of painting desks is Carmen's work under Rules 117, and 26(a) of the Agreement, the Decision of May 12, 1954 (Employes' Exhibit D-3) and the statements signed by the Local Chairman and four Carmen Painters.

The Carrier contends that the work in question is not within the coverage of the agreement; or within the Decision of May 12, 1954; or the exclusive past practice of the parties, system-wide.

The Crest Office Building is not in the Maintenance of Equipment Department, but rather is an office building housing the Carrier's operating department staff. The Crest Building is not in the Maintenance of Equipment Department. The desks painted by the outside contractor were all located in the Crest Building. The front piece of the Agreement of the parties states:

"It is understood that this Agreement shall apply to those who perform the work specified in this agreement in the Maintenance of Equipment Department and in the Reclamation Plant at Palestine, Texas."

Since the Crest Building is not a part of the Maintenance of Equipment Department, and obviously not part of the Reclamation Plant, Agreement Rules 117 and 26(a), cited by the Organization, as they relate to the painting work in the Crest Building cannot serve as a contractual basis to claim the painting work in question. The front piece provision explicitly limits the applicability of the rules cited by the Organization.

The Decision of May 12, 1954 in part states:

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The work involved in the repair and refinishing of office desks and filing cabinets made of wood, when performed in the Maintenance of Equipment Department, was recognized as work of the Carmen's craft.

Decision: Office desks and filing cabinets made of light gauge steel when repaired in the Maintenance of Equipment Department, North Little Rock Shops, will be dismantled, re-assembled and finished by employes of the Carmen's craft but any fabrication or repairs of parts thereof when made of light gauge steel will be performed by employes of the Sheet Metal Workers' craft. (emphasis added)

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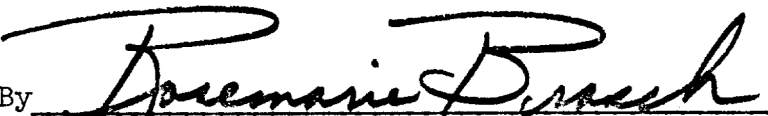
The Decision is not controlling in the instant case since it explicitly pertains to work performed in the Maintenance of Equipment Department. The work in the instant case was performed in the Crest Building, which is an operating facility. The Organization does not meet its burden of proof of showing an exclusive past practice on a system-wide basis for the painting of desks in the operating department by its statements contained in Employees' Exhibits "D-1" and "D-2". We shall deny this claim.

A W A R D

Claim denied.

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 10th day of February, 1978.