

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 25 of the controlling Agreement and Memorandum Agreement of May 22, 1968, at Sedalia, Missouri, December 18, 27 and 29, 1978, when they used other than those with exclusive rights to perform painting work at their Sedalia, Missouri shop.
2. That the Missouri Pacific Railroad Company be ordered to compensate Painter W. H. Hill in the amount of twenty-four (24) hours at the punitive rate and Painter E. Burnett in the amount of sixteen (16) hours at the punitive rate for their violation of exclusive rights to painting.

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.

Claimants are two of the three Carmen Painters assigned to the Carrier's Sedalia, Missouri Shop. Claimants are covered, with other Carmen, under a Memorandum of Agreement dated May 22, 1968 which provides for certain consolidation of various Carmen sub-groups. The relevant portions of the Memorandum of Agreement read as follows:

"(1) The seniority of the mechanics and helpers, respectively, in Seniority Subdivision No. 1 - Patternmakers, Seniority Subdivision No. 2 - Upholsterers and Seniority Subdivision No. 3 - Painters and Silver Platers will be dovetailed in accordance with their seniority in their respective seniority subdivisions and then added to the bottom of the seniority roster for Seniority Subdivision No. 6 - All Other Carmen. Employees added to the consolidated seniority roster for All Other Carmen shall have prior rights to regular assignments in the seniority subdivision where they presently hold seniority ....

"(4) The employees on the consolidated seniority roster shall continue to hold their prior rights to work in the shop and in the reclamation plant as presently shown on the seniority rosters. In addition the prior rights of the employees under their present seniority subdivisions will be designated as follows:

|                                                         |     |
|---------------------------------------------------------|-----|
| Patternmakers - Seniority Subdivision No. 1             | PM  |
| Upholsterers - Seniority Subdivision No. 2              | UP  |
| Painters and Silver Platers-Seniority Subdivision No. 3 | PS" |

On three days in December 1978, painting work was required by the Carrier on a particular project. Claimants were employed together with another Carman on the day shift to perform this work, and the work was continued on the afternoon shift by other Carman not designated as Painters on three days. Such afternoon shift work was performed on straight time.

The Organization argues that the Memorandum of Agreement must be read to grant all painting work to Carman Painters, regardless of when performed. The Carrier stresses that the Memorandum of Agreement provides only "prior rights to regular assignments" (emphasis added) indicating the Carman Painters' right to placement as Painters in preference to and regardless of seniority in relation to other Carman.

Taking the Memorandum of Agreement as a whole, the Board shares the Carrier's view. Paragraph (4) of the Memorandum of Agreement does state, as pointed out by the Organization, that employees hold "prior rights to work in the shop and in the reclamation plant", but this is logically read in conjunction with the preceding Paragraph (1), which refers to "regular assignment" and is not a grant of total and exclusive work jurisdiction.

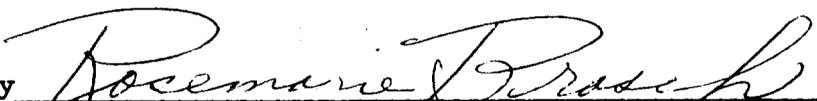
The Memorandum of Agreement clearly serves to grant priority rights to classifications such as Carman Painter, but it is equally clearly intended to provide the type of work distribution as practiced by the Carrier in this instance.

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 21st day of January, 1981.