

The Second Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carrier violated the rules of the controlling Agreement, specifically, Rules 29 and 138, as well as past practice on the property, when on the dates of September 18, 1979 and September 19, 1979, they allowed a carman to perform work accruing to a carman Painter, such work consisting of painting out and stenciling of Light Weighed cars at Stevens, Kentucky. Stevens, Kentucky maintains both a carmen's roster and a carman painters, both under Cincinnati, Ohio jurisdiction. Claimant was in furloughed status on the dates of this violation, thus, monetarily injured.
2. That Carrier be ordered to compensate Carman Painter F. N. Kennedy for all time lost account this violation amounting to eight (8) hours pay on the date of September 18, 1979 at the straight time rate, and eight (8) hours pay on the date of September 19, 1979 at the straight time rate.

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 employes 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.

This claim arises from work performed by Carman S. G. Egolf in September 1979. The Organization contends that Carrier violated Rules 29 and 138 of the Agreement when it assigned Carman Egolf to assist Carman-Painter C. F. Moellman in painting out and restenciling lightweights on seventeen cars at its Stevens, Kentucky facility on September 18 and 19, 1979. Carrier denies that it violated the Agreement here and, further, maintains that no such work was performed at all on September 19, 1979.

In the Organization's view Rules 29 and 138 require that only Carmen-Painters may paint out existing lightweights and restencil new ones on Carrier's cars. Those rules read, in relevant part:

"Rule 29

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

"Rule 138

Carmen's work shall consist of ... painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint, (not including use of sand blast machine or removing in vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; ..."

The Organization asserts that Rule 138 specifically covers the disputed work. That is, it delineates "cutting of stencils and removing paint" as accruing to the Carmen's craft. In addition, the Organization points out that the Carmen's craft is made up of four sub-divisions - Pattern Makers, Upholsterers, Painters and Other Carmen. At Stevens, Kentucky separate seniority rosters are maintained for Carmen and Carmen Painters. Thus, the Organization reasons that restenciling of lightweights, which is clearly Carmen-Painter work, may not be assigned to Carmen under Rule 138.

Finally, the Organization argues that Carmen-Painters at Stevens, Kentucky have traditionally performed such work. Therefore, the Organization concludes that this work is "generally recognized as painters' work" under Rule 138. Accordingly, the Organization asks that the claim be sustained and that Claimant, Carman Painter F. N. Kennedy be paid eight hours pay at the straight time rate for September 18 and 19, 1979.

Carrier, on the other hand, insists that it has not violated the Agreement here. It maintains that the general practice has been to assign Carmen and not Carmen-Painters to do restenciling work on freight cars. In addition, Carrier contends that at its Stevens, Kentucky facility Carmen have traditionally performed this type of work. Thus, Carrier reasons that such work is not reserved to members of the Carmen-Painter seniority roster.

Second, Carrier argues that "stenciling" is not painting work. Moreover, in Carrier's view, Carman Egolf simply assisted Carman-Painter C. F. Moellman on September 18, 1979, by holding stencils in place while Carmen-Painter Moellman used the aerosol spray can to lightweight the cars. Thus, Carrier concludes that Carmen Egolf did not engage in Carman Painter work on September 18, 1979. Accordingly, it asks that the claim be denied.

After reviewing the record evidence, we are convinced that the claim must fail. This is so for a number of reasons.

First, the Agreement does not contain separate descriptions of job duties for each of the various subdivisions within the Carmen craft. Absent such descriptions, the Organization is required to prove that Carmen-Painters have customarily and traditionally painted out existing lightweights and related

lettering and stenciled in new ones. The Organization has not met that burden here. If anything, the record reveals that Carmen have in the past performed this work at Carrier's facility in Stevens, Kentucky. Thus, there is no showing that Carmen-Painters engage in restenciling of lightweights to the exclusion of all others.

Second, the record indicates that Carman Egolf did no painting or stenciling on September 18 or 19, 1979. At most, he assisted Carmen-Painter Moellman on those days, by holding stencils in place while Moellman used the aerosol spray can. Accordingly, it is clear that Carman Egolf did not engage in Carmen-Painter work on those days.

Finally, to the extent that Awards on this issue are in conflict, we believe that the better rule is expressed in those Awards cited by Carrier. For example, in Award No. 6618, this Board held that "... such work (stenciling) is incidental to a Carman's other duties. It is not painting as intended for those in the Carman Painter classification." (See also Award Nos. 4846 and 3512). Award No. 4679, relied upon by the Organization does not, in our view, set forth a rationale as to how assisting in stenciling a railroad car constitutes Carman-Painter work.


In sum, then, we believe that the work performed by Carman Egolf on September 18, 1979, and arguably September 19, 1979, did not constitute Carman-Painter work pursuant to Rules 29 and 138 of the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 9th day of May, 1984