

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Duluth, Winnipeg and Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Duluth, Winnipeg and Pacific Railroad Company violated the terms of our current agreement when they assigned the work of painting a Burro Crane to Lehman Brothers Fabrication on May 3, 1986.
2. That accordingly, the Duluth, Winnipeg and Pacific Railroad Company be ordered to compensate DW&P Carman D. Kellett in the amount of eight (8) hours pay at the time and one-half (1.5) rate for May 3, 1986.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

In the Spring of 1986 Carmen forces repaired a Burro Crane in Carrier's Pokegama, Wisconsin, shops. When the repairs were completed the crane was delivered to Carrier's Virginia, Minnesota, shop, where on May 3, 1986, an employee from Lehman Brothers Fabrication repainted the machine. The Organization filed a Claim for eight hours at time and one-half rates contending that painting of equipment was work reserved to Carmen Painters under its Agreement. In support of its argument that Carmen have historically painted all rolling stock, including cranes, two statements, signed by six Carmen, were furnished Carrier.

On the property Carrier argued that work connected with painting Maintenance of Way equipment was not exclusive to the Carmen's craft. Also, the work was completed at a location at which no Carmen were on duty.

After docketing with this Board a Third Party notice was given the Brotherhood of Maintenance of Way Employees. It seems that that Organization also filed a Claim contending that the use of an outside contractor to paint Maintenance of Way equipment was a violation of its Agreement. This Claim, after initial denial, was never appealed further.

Upon consideration of the entire record, including the Third Party briefs, it is our opinion that the Carmen have made prima facie showing that its Agreement was violated when an outside contractor came onto Carrier's property and painted a Burro Crane. The Organization contended from the outset that such work was reserved to Carmen by Rules 33 and 97 of the Agreement. It also submitted evidence that Carmen have historically performed such work. This evidence remains unrefuted. The facts before us demonstrate that no effort, whatsoever, was made by Carrier, on the property, to discredit the Organization's evidence.

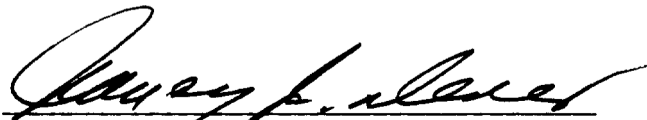
A prima facie case has been made that an Agreement violation occurred. The Claim will be sustained, but at straight time rates.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1990.