

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12554
Docket No. 12362-T
93-2-91-2-173

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 TCU
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

- "1. That the Southern Railroad Company violated the terms, conditions and provisions of the Agreement when they assigned Laborer R. K. Spradlin to Painter's duties on May 6, 1990 at Coster Shop, Knoxville, Tennessee.
2. That accordingly, the Southern Railroad Company now be ordered to pay Painter D. C. Tharpe eight (8) hours pay at the rate of time and one-half due to this violation."

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 employee 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.

As Third Party in Interest, the International Brotherhood of Firemen and Oilers was advised of the pendency of this dispute, and chose not to file a submission with the Board.

On May 4, 1990, Carrier, following its normal practice at the Coster Repair Shop, notified Carmen Painter Representative, D. C. Tharpe that four painters were needed for overtime work on the first shift on Sunday, May 6, 1990. Representative Tharpe, who is also the Claimant in this Docket, advised Carrier that he was only able to secure three of the ten men then currently working painting assignments for the Sunday overtime work. Carrier did not force assign any of the other seven painters to the overtime work, since

the Organization has objected to these assignments in the past. Instead, it filled out the paint crew with a Machine Operator, who until recently before May 4, 1990, worked as a Painter. Tharpe filed this Claim, seeking 8 hours additional overtime at the double time rate, on the basis that Carrier should have force assigned a Painter to the work, or worked an additional shift with one of the Painters who had accepted the overtime.

This Board acknowledges that at Carrier's Coster Shop overtime work in the Painter's Classification had ought to be performed by Painters. However, when Painters complain about being force assigned overtime, and Carrier accedes to this complaint, the Organization loses any license to object when outsiders are utilized after all Painters have been requested to accept the work and an insufficient number respond. Additionally, Carrier is not required to reschedule the project over two shifts so as to let some Painters double over, as suggested by the Organization. Carrier is responsible for scheduling the work and because an insufficient number of Painters were willing to respond at the time it has been scheduled does not dictate that it be rescheduled for a time when Painters are willing to the work.

The Claim is without merit. It will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 28th day of July 1993.