

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13375

Docket No. 13224

99-2-96-2-136

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
**(CSX Transportation, Inc. (former Chesapeake &
(Ohio Railway Company)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc., (hereinafter referred to as ‘carrier’) violated the controlling Shop Crafts Agreement specifically Rule 154 (a) and Paragraph 2 of the February 2, 1955 Memorandum Agreement, when carrier assigned other than carmen painters to perform work exclusively reserved to the carman painters craft.**
- 2. Accordingly, the Carrier be instructed to pay painters P.C. Gerlach, ID #94355, and R.R. Harlow, ID #184127, (hereinafter referred to as ‘claimant’s’) eight hours each at the applicable carman painter overtime rate for said 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 were given due notice of hearing thereon.

This claim requests overtime payment for two Painters for Carrier's October 28, 1995 contracting of the work of stenciling designating numbers on the building structure at the ends of pits 1-25 in the High Bay at the Huntington Locomotive Shop. The Organization asserts exclusive and historical jurisdiction over such work on the basis of Rule 154, Classification of Work, and Paragraph 2 of the February 2, 1955 Memorandum Agreement that provides, in pertinent part:

"The Shop Craft painters will paint all equipment, facilities or accessories, whether free, fastened or mounted in floor of buildings, such as . . . shop signs, . . . identification markings. . . ."

Carrier denied the claim on the basis of the fact that this restenciling work was part of the contract for repainting the ceilings and columns that was done as a turnkey operation, with the contractor being responsible for all aspects of the job and no work of any craft separated out. Other arguments raised by the Organization on the property but not progressed to the Board are not properly before us for consideration.

The issue in this case is whether the Organization sustained its burden of proving that its members were entitled to perform the work in question in this instance, or whether Carrier rebutted such contention on the basis that this work was part of a larger contract that it was not required to piecemeal. It was undisputed that Carmen Painters had performed the work of painting shop signs and designated markings at the Huntington Locomotive Shop in the past. It was also undisputed that Carrier contracted the cleaning and painting of the structural steel ceilings and columns in the High Bay and the Organization did not argue with the fact that this stenciling was a result of the numbers having been painted over during this process. There is no evidence of the scope of the contract or its inclusions in the record developed on the property other than that it was a turnkey operation, with contractor responsibility for all facets of the job.

While the Board is mindful that Carrier is not obligated to piecemeal contracted projects to permit the assignment of a small portion of the job to a single craft, see Second Division Awards 12826, 12825; Special Board of Adjustment No. 570, Awards

433, 426 and 394, this finding is premised upon a showing by Carrier that the disputed work was encompassed within the contract, was only a small portion of it, and was not easy to segregate. A review of the record convinces the Board that Carrier failed to prove the requisite elements in this case, as no specifics of the contract or its scope were provided, nor was it clear whether the work in issue herein was originally encompassed within the contract or created as a result of the performance of it. Under these particular circumstances, we must reject Carrier's defense to the performance of this work.

However, we find that the request for payment at the overtime rate is excessive. It is firmly established that the pro rata rate is the proper rate for compensation for work not performed and is the appropriate measure of the value of work lost. See Second Division Awards 6359, 2956. Accordingly, we direct that Claimants receive eight hours compensation each at the pro rata rate for work associated with the October 28, 1995 contracting of the stenciling function.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 12th day of April 1999.