

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13767

Docket No. 13590

03-2-00-2-70

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 2 when they arbitrarily assigned a Machinist to perform work that is historically and contractually recognized as Carman's work.
2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Ernest E. Moulton in the amount of four (4) hours pay at the overtime rate. This is the amount he would have earned had the Carrier properly assigned this work.”

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.

The dispute in this case concerns a July 14, 1999 assignment of Machinist S. Reed to the Paint Shop to blow grit from a locomotive during the hours of 1500-2300 when no Carmen/Painters were on duty. That work had been performed by Carmen/Painters during the first shift (0700-1500).

On the property, in its April 13, 2000 letter, the Carrier stated that "... we do admit that this work has historically, through past practice, been performed mostly by painters ...", but further asserted "... that this work has been performed, on a limited basis, by other crafts under their incidental work rules." Therefore, as admitted by the Carrier, the work of blowing of grit is Carmen/Painters' work with the exception of limited incidental performance by other crafts where allowed.

The Machinists' Incidental Work Rule (Rule 34) as quoted in Second Division Award 13730 provides that Machinists can perform "... any and all other services associated with the repair and maintenance of machines and locomotives and incidental to a clean, safe, and operational facility ... limited to no more than 4 hours in the work day."

In Second Division Award 13731, the Board found that the Carrier did not demonstrate facts to show how the blowing of grit was incidental to Machinists' work. As in that case, the Carrier has not shown facts here for this Board to conclude that the blowing of grit performed by Machinist Reed was incidental to his Machinist's work. See also, Second Division Award 13570 which involved assignment of stenciling work to a Machinist ("... the Carrier did not refute the Organization's assertion that the stenciling involved was the total work assignment, or show what other work assignment the stenciling was incidental to"). Indeed, the Carrier's October 15, 1999 letter indicates that the only consideration for the assignment to Machinist Reed was the ability to use an employee at straight time ("... the Carrier ... simply used a straight time employee under the current Incidental Work Rule to complete a task, rather than calling an employee in on overtime"). The "task" that was completed by Machinist Reed was the work started by Carmen, which the Carrier states in its April 13, 2000 letter "... has historically, through past practice, been performed mostly by painters. ..."

Thus, in this case, the Carrier cannot rely upon the Machinists' Incidental Work Rule to permit the assignment of Carmen's work to a Machinist without making some kind of showing that the work is incidental to Machinists' work. As the Machinists Rule is written, Machinists can perform ". . . any and all other services associated with the repair and maintenance of machines and locomotives and incidental to a clean, safe, and operational facility . . . limited to no more than 4 hours in the work day" [emphasis added]), because of the use of the word "and" between scope covered "services associated with the repair and maintenance of machines and locomotives" and "a clean safe, and operational facility," the requirement for a showing of incidental duties remains. To find otherwise would render the duties set forth in the Carmen's Scope Rule (or as admitted by the Carrier that the disputed work here has ". . . historically, through past practice, been performed mostly by painters . . .") meaningless.

The claim shall therefore be sustained. However, the four hours' compensation sought by the Organization shall be at the straight time rate.

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 24th day of October 2003.