

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13810

Docket No. 13676

04-2-02-2-38

The Second Division consisted of the regular members and in addition Referee Don A. Hampton when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division
(Springfield Terminal Railway

STATEMENT OF CLAIM:

“Claim of the Committee of Union that:

1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 2 when they arbitrarily ordered two (2) Engineering Department employees to paint and stencil reporting marks on MEC freight cars.
2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Painters, F.E. Curtis in the amount of eight (8) hours at the overtime rate and M.E. Lawrence five (5) hours at the overtime rate. This is the amount they would have earned had the carrier properly assigned the 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.

On October 19, 2001 the Carrier ordered two B&B Department Employees represented by the Brotherhood of Maintenance of Way Employees to paint and stencil reporting marks on two box cars in Waterville, Maine. Those box cars were identified as MEC 9812 and MEC 6339.

That such action on the part of the Carrier was a violation of the controlling agreement in particular Rule 2.1 which reads in pertinent part as follows:

“Rule 2.1 Employees qualified under provisions of this Agreement to perform the following will be classed as carmen:

(k) Paint cars, locomotives and components including stenciling;

(q) Other work generally recognized as carmen’s work.”

There is no dispute that the work in question was performed by B&B Employees. The Carrier contends that as the cars in question are being used for storage by the Engineering Department Rule 2.1 does not apply. The Carrier also states that the B&B Department has a long history of painting facilities and structures and that such work is not reserved exclusively to the Carmen. The Carrier further contends that it is “highly unlikely” that these cars will be returned to service. That if these cars were to be returned to service they would be painted prior to returning to service.

The Organization contends while the cars might be currently used for storage they are still cars sitting on their own wheels on tracks and can be placed in revenue service. That under the provisions of Rule 2.1 the work is reserved to the Carmen and the claim must be sustained.

The Brotherhood of Maintenance of Way Employees was notified of this dispute and filed a Submission with the Board.

For the Carrier to prevail we must find that the cars in question are facilities or structures. There is nothing in the record to support such a conclusion. If as indicated in Third Division Award 19095 the cars’ wheels had been removed and

the cars placed on a foundation it would be highly questionable if there was a violation of the controlling Agreement. As this was not the case the claim will be sustained.

AWARD

Claim sustained.

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 16th day of September 2004.