

**Award No. 1516
Docket No. 1429
2-AT&SF-CM-'52**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Jay S. Parker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY SYSTEM**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement dipping car material in paint and varnish vats is Carmen Painters' work.

2. That it is improper under the current agreement to assign other than painters to operate the paint and varnish vats when dipping Car Material for the purpose of preservation of such material.

3. That accordingly the Carrier be ordered to assign Carmen Painters within their classification to perform the aforesaid work.

EMPLOYEES' STATEMENT OF FACTS: At West Wichita, Kansas, the carrier maintains facilities in the car department for building, maintaining and repairing refrigerator and other railway cars, including a force of approximately 300 carmen, carmen apprentices, helpers and painters. The carrier has in this department, paint and varnish dipping vats. The vats are made in width, depth and length, which are filled to a certain capacity with paint or varnish, the size of the vat being large enough to place car material such as filler blocks, braces, lining, paneling, etc., into the paint, submerging the material in the paint or varnish, then removing the material from the vats and placing same on a dripping and drying rack.

Prior to, and since June 25, 1947, shop laborers have been performing the work of dipping car material in paint and varnish vats at laborers' rate of pay.

The agreement effective August 1, 1945, and subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted to be as described in the foregoing statement of facts, indisputable that the paint and varnish vat operators are substituted for carmen painters and are assigned to perform carmen painters' work, defined as such in the classification of work provisions of Rule 102, particularly that part which reads:

men and oilers' agreement to take finished lumber as it is received from the planing mill and dip it into the paint vat after which it is removed and allowed to drain. When it has become thoroughly dry the material is loaded on the trucks and moved to different locations about the shops for storage or application to cars. All of the lumber for inside framing used in general repairs to refrigerator cars, as well as material for coal, box and other equipment, is first dipped in these vats, the mixture consisting of Mineral Brown primer with No. 2 paint thinner and B. C. spirits, varnish and signal pole black paint. After the parts are applied to cars they are given two coats of paint by the painters. In other words, the dipping of the lumber in the vat is not for the purpose of painting but as a means of preserving the wood and all that is required by the laborer is to place the material therein and immediately remove it and hang it on a rack above the dipping vat for draining.

POSITION OF CARRIER: 1. The work involved has, for almost fifteen years, been performed by employees covered by the firemen and oilers' agreement. The issue involved is the proper interpretation of shop crafts' Rule No. 102 and more specifically as to what actually constitutes "painting". An authoritative definition of painting is: "the act of or employment of laying on paint with a brush or spray". This test is not met in performing the operation in question as no skill is required to handle the work and the primary purpose of dipping the material is to preserve the concealed parts of the lumber and thus guard against decay. While a mixture of paint is presently employed, linseed oil or some other solution that is equally as effective a preservative, may be substituted.

2. It is illogical to contend that the process of dipping material or fabricated parts of cars in the paint vats is carmen's work as defined by shop crafts' Rule No. 102 when the same rule specifically provides that the removal of paint at cleaning vats is not the work of employees of the carmen's craft as will be noted from the following quoted from Rule 102.

"Carmen's work shall consist of * * * painting, varnishing, surfacing, decorating, lettering, cutting of stencils, and removing paint (the latter when not done by helpers and not including use of sand blast machine or at paint removing vats) * * *."

3. As has already been explained, the use of laborers for dipping material into paint vats has prevailed at West Wichita for more than fifteen years and it is pertinent to state that in the negotiations leading up to the signing of the agreement August 1, 1945 there was no request that the dipping of lumber into paint vats was work that belonged to the carmen's craft. Obviously, there is nothing contained in Rule 102 that can be construed, by inference or otherwise, as covering the dipping of material into paint vats as work of carmen. It is purely unskilled work performed for the sole purpose of preserving the lumber, much after the fashion of treating railroad ties to prolong their life which work likewise is handled by laborers or classes of employees who are paid rates slightly lower than those paid laborers handling the dipping of material in paint vats at West Wichita.

This claim is without merit and should be denied for these reasons.

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.

The parties to said dispute were given due notice of hearing thereon.

Portions of Rule 102 of the current agreement pertinent to the decisive issue involved read:

"Carmen's work shall consist of building, maintaining, dismantling for repairs . . . , painting, upholstering and inspecting all passenger and freight cars, . . . painting, varnishing, surfacing, decorating . . . ; all other work generally recognized as painters' work under the supervision of the Locomotive and Car Departments . . ."

Notwithstanding the foregoing rule, the carrier has been assigning employes, not members of the carmen's craft, to dip finished lumber intended for use in the construction of cars into dipping vats filled with a mixture of paint and varnish. The claimant insists this work belongs to carmen painters under the agreement—while the carrier contends it may be assigned to other employes.

Conceding, as the carrier contends, the dipping of the finished car materials in the paint and varnish vats preserves the wood, it is clear from the record the primary purpose of that operation is to apply a priming coat of paint and varnish to the materials. The fact this priming coat is applied by dipping such materials into a mixture of paint and varnish instead of applying that mixture with a brush or spray does not change the status or character of the work. Therefore, such operation constitutes a type of painting which, under express provisions of the rule heretofore quoted, is carmen's work and should be assigned to carmen painters.

Claim sustained.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1952.