

Award No. 1656

Docket No. 1544

2-AT&SF-CM-'53

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

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

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

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly assigned two Bridge and Building employees to perform Carman Painters' work of painting portable supply bins and Upholsterer work benches on March 31, 1950, April 3, 4, 5 and 6, 1950.

2. Accordingly the Carrier be ordered to additionally compensate Carman Painters Archie Viers and Geo. W. Cook, Sr. in the amount of thirty-two (32) hours each at their applicable hourly rate of pay.

EMPLOYEES' STATEMENT OF FACTS: The carrier maintains a large back shop at Topeka, Kansas, and at this seniority point fifty (50) carman painters are employed with working hours 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M., five days a week, Monday through Friday. On Friday, March 31, 1950, from 12:30 P. M. to 4:30 P. M.; Monday, April 3, from 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M.; Tuesday, April 4, from 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M.; Wednesday, April 5, from 8:00 A. M. to 12:00 Noon and 12:30 P. M. to 4:30 P. M.; and Thursday, April 6, 1950, from 8:00 A. M. to 12:00 Noon, the carrier assigned two (2) bridge and building painters to paint portable supply bins and upholsterer work benches located in the upholstering shop at Topeka, Kansas.

The equipment painted was portable and not a part of or attached to the building.

Carman Painters Archie Viers and George W. Cook, Sr., hereinafter referred to as the claimants were available to perform the work if assigned.

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

POSITION OF EMPLOYES: It is not in dispute that these claimants established and maintain seniority rights within the sub-division, "Painters" under the terms of Rule 28 captioned "SENIORITY," and that they were

- (b) That the work in question is not specifically covered by the shop crafts' agreement;
- (c) That the claim involves a jurisdictional dispute between the Brotherhood Railway Carmen of America and the maintenance of way organization, and
- (d) That the case is not properly before the Second Division on account of the maintenance of way organization not having been notified of the dispute and given an opportunity to present its views. See Second Division Award 1523 and others mentioned therein. Therefore, by reference what is there said is made a part of this submission.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

The record shows that on the days stated in the claim, Bridge and Building forces painted the interior of Passenger Shop Car Building No. 2, including the interior of that portion of the building occupied by the upholstering shop. As a part of the same project, they also painted the supply bins and upholsterers' work benches in the upholstering shop. The supply bins appear to have been moveable bins in the sense that they were not attached to the building. They were not ordinarily moved about. The work benches appear to have been unattached to the building and moveable in every sense of the word. Claimants are carmen painters who assert that the painting of the supply bins and work benches is the work of their craft and not that of Bridge and Building painters. The claim is based on this contention.

No claim is here made that it was improper under the rules to assign the painting of the interior of the passenger shop car building to Bridge and Building painters. The dispute centers around the assigning of the painting of the material bins and work benches to other than carmen painters. The Carman's classification of work rule as it bears upon this dispute provides as follows:

"Carman's work shall consist of building, maintaining, dismantling for repairs (except all-wood freight train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flash making and all other carpenter work in shops and yards, except work generally recognized as Bridge and Building Department work; . . . , painting, varnishing, surfacing, decorating, lettering, cutting of stencils, and removing paint . . . ; all other work generally recognized as painter's work under the supervision of the Locomotive and Car Departments; . . . ; and all work generally recognized as carmen's work."

Rule 102, agreement effective August 1, 1945.

It will be observed that the foregoing rule gives to carmen all work in the building, maintaining and dismantling for repairs of freight and passenger cars (except all-wood freight train cars). In addition thereto, carmen are entitled to perform other work not connected with passenger and freight cars such as planing mill, cabinet and bench carpenter work, and all other carpenter

work in shops and yards, except work generally recognized as Bridge and Building Department work. The rule includes all painters' work under the supervision of the Locomotive and Car Departments, and all other work generally recognized as carmen's work. Consequently, we take the position that the rule was intended to include all painters' work that was not generally recognized as Bridge and Building Department work, and includes all painting work generally recognized as painters' work under the supervision of the Locomotive and Car Departments and all other work generally recognized as carmen's work. We think Bridge and Building work means what the name indicates, — that the construction, maintenance and dismantling of buildings is the work of the Bridge and Building Department. It would not, in the absence of agreement or practice, include the painting, varnishing or otherwise maintaining of furniture and equipment not attached to the building. We think the agreement, properly interpreted in the light of the inclusionary and exclusionary provisions contained therein, assigns the work involved in this dispute to carmen.

We think this interpretation is sustained in principle by Docket 1088, Railway Board of Adjustment No. 2 wherein the provision "and all other carpenter work in shops and yards" was interpreted to mean all carpenter work except that in connection with the erection and repair of buildings. See also Docket 2201, Railway Board of Adjustment No. 2. The same reasoning supports our holding that all painting of moveable supply bins, work benches, furniture and the like, is the work of carmen as against the claims of Bridge and Building forces.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1953.