

Award No. 2214

Docket No. 2004

2-CRI&P-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the assignment of two Bridge and Building employes to paint the inside of RI bunk car 95725 at Chickasha, Oklahoma, September 22, 1954, was not proper or authorized under the current agreement.

2. That accordingly, the Carrier be ordered to additionally compensate Carman Painter B. W. Baxter for sixteen (16) hours at the applicable Carmen's rate.

EMPLOYEES' STATEMENT OF FACTS: At Fort Worth, Texas the carrier maintains a force of approximately thirty carmen, where passenger and freight cars, both wood and steel, are painted. Painter B. W. Baxter, hereinafter referred to as the claimant, is regularly assigned at this point as carman painter, with assigned hours 8:00 A. M. to 12:00 Noon, 12:30 P. M. to 4:30 P. M., Monday through Friday. On September 22, 1954, at Chickasha, Oklahoma, two bridge and building employes were assigned to paint RI bunk car 95725, consuming a total of 16 man hours.

The carrier has declined to adjust this dispute on any acceptable basis and the agreement effective October 16, 1948, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is not in dispute that the work was performed at Chickasha, Oklahoma, or that the work was performed by other than carmen, which is affirmed by letter dated January 26, 1955, copy submitted herewith and identified as Exhibit A.

It is not in dispute that the claimant established and maintained seniority rights within the Sub-division "Painter" under the terms of Rule 27 captioned "Seniority", and that he was regularly employed as such, as provided in Rule 28 in the applicable part reading:

work generally recognized as carmen's work so as to bring the entire operation under Rule 110, the carmen's classification of work rule. Therefore, Mr. Baxter's claim is greatly inflated.

We also question the availability of Mr. Baxter to make the 177 mile trip to Chickasha, do the painting, and return to Ft. Worth. He was already fully employed at Ft. Worth, working eight hours on September 21, 22 and 23rd, the date of claim and the day preceding and following said date.

The fact remains that if the B&B men had not renovated their quarters, the job would not have been done, for it is absurd to believe the carrier would have evicted the B&B employes from their living quarters, towed the car 177 miles to have the interior redecorated, then returned to Chickasha when they, themselves, could do this small paint job without violation of any agreement.

Regardless of Claimant Baxter's desire in the matter, the fact remains that the agreement covering carmen's work was not violated. Mr. Baxter holds seniority at Ft. Worth, not Chickasha. No carman painter at Chickasha was furloughed, hence none were deprived of work at that point. Mr. Baxter was not available to accept a call to go to Chickasha as he was fully employed at Fort Worth during the period when B&B employes were busy maintaining their living quarters at Chickasha.

Because there was no violation of the agreement in this case, the carrier has declined this claim and respectfully requests your Board to support our declination.

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 waived right of appearance at hearing thereon.

On September 22, 1954, carrier used two B&B employes to paint the inside of a bunk car used by B&B Gang No. 4 at Chickasha, Oklahoma, following a fire which damaged the inside of the car. Claimant was assigned as a carman painter at Fort Worth, Texas. He claims sixteen (16) hours' work because of the alleged improper use of the B&B employes.

There were no carmen painters assigned at Chickasha. Claimant had point seniority at Fort Worth. The record shows that claimant worked his regular assignment at Fort Worth on September 22, 1954. Carrier asserts that under these circumstances the claim is invalid.

In Award 1269, the dispute was similar to the one before us and between the same parties. In that case carrier used two B&B employes to apply screens and perform some other maintenance work on three work cars. The work was held to be within the carmen's agreement. We adhere to that decision in the present case. The work belonged to carmen.

Carrier says claimant was not entitled to the work because he had only point seniority at Fort Worth. The answer to this is that the violation deprived the carmen of the work. The fact that there were no carmen at Chickasha is not a defense that permits a contract violation. Carrier is

required to pay but once and will be protected against a second demand for the same violation. It is not a primary concern of the carrier as to which of two or more carmen the payment is made.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August, 1956.