

Award No. 2619

Docket No. 2469

2-C&O-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That The Chesapeake and Ohio Railway Company be ordered to additionally compensate Carman Painter Helper C. N. Bolin in the amount of 8 hours at the time and one-half rate for having assigned Laborers on April 26, 1955 to clean the inside of front end of Diesel Locomotive 5570 preparatory to painting, in violation of the current agreement.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company (hereinafter called the carrier) regularly employs painters and painter helpers at Huntington, West Virginia and these painter helpers, prior to this instant dispute, have always performed the work of cleaning preparatory to painting.

The carrier, nevertheless, elected on Thursday, April 26, 1955, to assign laborers to clean the inside front end (Fan Room) of Diesel Locomotive No. 5570 preparatory to painting and this occurred with the evident knowledge that Painter Helper C. N. Bolin, hereinafter referred to as the claimant, would be damaged because he was regularly employed on the second shift and available for such cleaning service.

This dispute has been progressed with the carrier up to and including the highest officer designated thereby to handle such disputes and the result was that he declined to adjust it.

The agreement effective July 1, 1921, as it has been subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted as follows:

"1. The cover page of the aforesaid controlling agreement reflects the classes of employees to which the rules thereof are applicable and it will be noted that the Laborers are not included thereon.

The cleaning performed by the laborers was not done to prepare the unit for painting. This cleaning was done for the purpose of getting the area in condition so that mechanics of the various crafts could perform their work. The oil on the floor created a fire hazard. In fact, one fire had already occurred in this area. The modification being made to the lube oil system required considerable heating and burning, and it is unreasonable to consider that such work should be performed without any cleaning being done in this area.

The employees are here contending that because painting was done, any and all cleaning which was to be performed should have been performed by painter helpers. Cleaning as was done in this case was work which has been performed by laborers for many years. To sustain the employees' claim under these circumstances would result in a transfer of work from laborers to painter helpers.

In handling this case on the property, the employees took exception to statements made by Shop Superintendent Savage and stated that he was not in position to know what actually transpired due to his being in California on company business. The carrier calls attention to its Exhibits A, B and C referred to in the statement of facts. These statements were made by the employees who were in charge of and actually performed work in the front portion of Diesel Unit 5570, and these employees were certainly in a position to know the facts in the case. The sheet metal worker states that he requested that the area be cleaned in order that he could proceed with his work. The work performed by the sheet metal worker did not involve painting, nor was it in connection with painting that he asked that the area be cleaned.

When the decision was made that painting work was to be performed, the painter helper was used to perform the cleaning work necessary in preparing the surface for painting. This is the work to which painter helpers are entitled under the rules of the agreement, and using painter helpers for this work conforms to past handling at Huntington Shops.

Claim has been made for eight hours pay at time and one-half rate. The time consumed by the two laborers in cleaning was three hours each, or a total of six hours. Without prejudice to the position of the carrier in this case, carrier submits that there could be no justification for any claim in excess of six hours, and this at straight time rate. The Board has held that pay for service not performed is to be at pro rata rate. See Awards 1268, 1269 and 1387.

The claim of the employees should be declined for the following reasons:

1. Claim is not supported by agreement rules.
2. Cleaning performed was for the purpose of placing the area in condition so that mechanics could properly and safely perform necessary work. The cleaning was not for the purpose of preparing surface for painting.
3. Necessary cleaning to prepare for painting was performed by painter helper.

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 claim is that of a Carman Painter Helper for a day's work, at over-time rate, for services performed by Laborers. The work in question was the cleaning of the inside of the front end of a Diesel locomotive—claimant says preparatory to painting; carrier says preparatory to work by a sheet metal worker.

The uncontroverted facts are that Diesel Unit 5570 was undergoing repairs which necessitated the removal of the core and oil filter tank. As a result a considerable amount of oil ran out and covered the front end of the unit. Also it was required that the boilermakers remove two brackets with an acetylene torch. In the course of this work fire ensued which fouled up the site of the work. The mechanics who preceded the painters on the job insisted that the site be cleaned up to safeguard their presence with the fire creating tools of their trade as well as to facilitate their work.

The foreman called laborers to do the necessary clean-up work. Two laborers expended three hours each in cleaning the inside front end of Diesel Unit 5570.

The carrier contends that it was not until the afternoon of the day on which the work in question was performed that the need for painting due to the work of the sheet metal workers became apparent. That seems rather strange considering the need for welding work was anticipated from the beginning.

From the facts presented, it would be highly presumptuous for us to flatly say that this was a clean-up job. Similarly, if we decreed it to be a job preparatory to painting. Obviously it was both. In retrospect, we perceive that the Solomon-like manner of handling such a situation would have been to assign one carman painter helper and one laborer to the three hour, two-man job. However, we are not justified in placing such hindsight determination upon a supervisor charged with the duty of making snap decisions in such matters. Accordingly, we find that the proof is not sufficiently clear that this work was done preparatory to painting to justify the claim asserted.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of September 1957.