

Award No. 2921

Docket No. 2709

2-C&O-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Kiernan when the award was rendered.

PARTIES TO DISPUTE:

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

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement other than Carmen Painters were improperly assigned the painting of material racks in the area adjacent to the newly located triple valve department in the locomotive shops on May 8, 1956.

2. That accordingly the Carrier be ordered to assign the painting of the material racks to the Carmen Painters.

EMPLOYES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, maintains within the confines of its Huntington, West Virginia shops a locomotive shop building, which is approximately 460 feet wide by approximately 600 feet on the south side with an ell on the north side making that side approximately 700 feet long, wherein they relocated the air brake and triple valve department. In connection with the relocation of the air brake and triple valve department, the carrier enclosed an area of the shop building approximately 34 feet wide by 125 feet long adjacent to the air brake and triple valve department for the use of the stores department in storing parts and material used in repairing air brakes and triple valves.

This building is used as a repair shop, wherein the carrier repairs locomotives and passenger coaches, all of which is under the jurisdiction of the mechanical department. Carmen painters employed in the Huntington Shops, paint all equipment, facilities and accessories in the Huntington Shop buildings, which are under the jurisdiction of the mechanical department.

On May 8, 1956, the carrier assigned Maintenance of Way painters to paint the material racks located in the enclosed area used by the stores department.

The fundamental issue in this case is one of jurisdiction involving painters at Huntington Shops represented by the carmen and Maintenance of Way Employees and whether the carmen painters have the right to perform certain painting work to the exclusion of the Maintenance of Way Employees.

The carrier submits that the Maintenance of Way Employees have been assigned to perform the work in question and the Board is without authority to render a decision in this case without giving due opportunity to file and be heard to such employees, a proper party to this dispute, and carrier again urges that this be done before proceeding further with the case.

2. The claim is not supported by agreement rules and should be denied.

Memorandum agreement dated February 2, 1955 is controlling. This agreement was made for the purpose of promoting proper relations between the two organizations without marked sacrifice by either. The stores department furnishings, including the material racks specifically involved in the instant dispute, had always been painted by Maintenance of Way painters. This equipment was moved out of the stores building into a designated stores area within the main shop building. The equipment still belonged to the stores department and was for their exclusive use and to hold that this move would require the transfer of such painting work to another craft would be contrary to the explicit purpose and intent of the February 2, 1955 Agreement.

The material racks were placed in an enclosed area designated as belonging exclusively to the stores department, and any work within this area belongs to the same employees to which it had belonged before the location of the air brake stores section was moved.

Paragraph 2 of the agreement referred to by the carmen in support of their claim was intended to apply to such listed equipment belonging to the Maintenance of Equipment Department since at the time the agreement was made the stores department had no specific store area or equipment located within the shop building proper.

The carmen have seized upon a portion of the agreement in an endeavor to support their position without giving consideration to the other provisions of the agreement, including its stated purpose and intent. It is well settled that in construing a rule some part of the rule may not be lifted from the context and construed separately, but the rule as a whole must be considered in the determination of its meaning.

The agreement as a whole is clear and unambiguous and the interpretation being placed thereon by the carmen conflicts therewith.

There is no rule in the memorandum agreement or the general agreement which assigns such painting work as is covered by the instant dispute to carmen painters.

Carrier has shown that a sustaining award would infringe on and nullify the rights of another craft who are a party to the memorandum agreement of February 2, 1955, which is controlling. Further, that the claim is without merit and is not supported by agreement rules.

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.

Claimants contend that under the current agreement other than carmen painters were improperly assigned the painting of material racks in the area adjacent to the newly located triple valve department in the locomotive shops on May 8, 1956, and that accordingly the carrier be ordered to assign the painting of the material racks to the carmen painters.

Carrier pleads violation of Section 3, First (j) of the Railway Labor Act and also that the Brotherhood of Maintenance of Way Employees be notified of this claim before a decision is rendered. The referee is appointed and derives his authority from Section 3, First (1) of the Railway Labor Act. He is appointed "to sit with the division as a member thereof and make an award." Because of this restriction Section 3, First (j) of the Railway Labor will not be discussed other than to cite Third Division Award 8079 wherein the U. S. Supreme Court decision on the subject is fully discussed.

On February 2, 1955, a memorandum of agreement was entered into between the carrier, the Maintenance of Way employees and the Carmen. This memorandum was entered into after several conferences between the parties for the purpose "of clarification of lines of demarcation between the work of Maintenance of Way and Shop Craft paint force employees, with relation to work assignment in the Huntington Shop." Copy of that memorandum is fully quoted in carrier's response to claimant's submission.

Paragraph 2 of that memorandum reads:

"The shop craft painters will paint all equipment, facilities or accessories, whether free, fastened or mounted in floor of buildings, such as machinery, racks, bins, benches, tables, tool boxes, cabinets, lockers, furniture, stretcher cases, jib cranes, scaffolding, shop signs *(floor striping, identification markings)*, welding booths and all mobile equipment."

This is a claim for the work of painting "material racks."

Paragraph 3 of the memorandum reads as follows:

"The scope of this agreement covers the locomotive and car shops, and Divisional Shops only. It is agreed the Maintenance of Way painters will continue to paint all buildings and attachments thereto, under the jurisdiction of Stores and Maintenance of Way Departments."

The material racks are not "attachments thereto," they are not attached to the building. Carrier's Exhibit B, ends with these words: "This being an area turned over to Stores and shelving or racks in same belonging to Stores, in their entirety, it is the Maintenance of Way Painters' job to paint the shelving or racks as they are under jurisdiction of Stores." In its submission, carrier makes this statement: "The material racks were placed in an enclosed area designated as belonging exclusive to the Stores Department, and any work within this area belongs to the employees to which it had belonged before the location of the Air Brake Stores section was moved."

The material racks were enclosed within an area in the Shop Building. This is clear from carrier's submission. The Shop Building is under the supervision of the Maintenance of Equipment Department, not the Stores or Maintenance of Way Department.

We conclude that paragraph 2 of the memorandum, quoted above, is controlling.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1958.