

Award No. 2953

Docket No. 2845

2-CUT-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carman)**

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly assigned Bridge and Building employes to perform Carman Painters' work by painting a number of stock bin pans in Section A of the Stores Department on November 2 and 20, 1956.

2. Accordingly the Carrier be ordered to compensate all Carman Painters who were in service on November 2 and 20, 1956 a total of 16 hours at the applicable rate, to be divided equally among them.

EMPLOYEES' STATEMENT OF FACTS: At the time of the violation the carrier maintained a force of four (4) carman painters on the first and third shifts, shown on the force statement, consisting of two seven day assignments, one on the first shift with the working hours 8 A.M. to 4 P.M., Monday through Friday with the rest days of Saturday and Sunday; one on the third shift with the working hours 11 P.M. to 7 A.M., Thursday through Monday with the rest days of Tuesday and Wednesday; one six day assignment on the first shift with the working hours from 7 A.M. to 3 P.M., Tuesday through Saturday with the rest days of Sunday and Monday, this job was relieved on Monday only; and one regular relief assignment to work on rest days of six and seven day assignments with different working hours, Saturday through Wednesday with the rest days of Thursday and Friday. All jobs have two consecutive rest days and 20 minutes for lunch.

The carrier assigned bridge and building painters to paint on a number of metal stock bin pans 17½" long, 6" wide with ½" sides in Section A of the Stores Department on November 2 and 20, 1956. These bridge and building employes worked a total of sixteen (16) hours on this assignment, 8 hours on November 2 and 8 hours on November 20, 1956. These stock bin pans are portable and in no sense a part of a bridge, building or structure.

Here we have three cases covering the same organization with The Cincinnati Union Terminal Company and the resulting three awards all stating that the carmen's organization does not have the exclusive right to perform the work complained of in claim. In Award 2361 stated in part — **"since we have held they (carmen) did not have the exclusive right to build these platforms, we do not think they had the exclusive right to paint them."** Emphasis by carrier. Also see Awards 1512, 1691, 1764.

The practice of B and B employees doing this work has been in effect for over 21 years and was in effect prior to September 1, 1949, effective date of our controlling agreement.

We are submitting as carrier Exhibit #1 list of dates on which B and B painters performed work in territory in which carmen painters work day in and day out.

A practice of over 21 years standing certainly had the acquiescence of all parties concerned and the carmen by neglecting to take the proper action in opposition of the practice have implied consent thereto, consequently practice should not be disturbed.

The three denial awards by the Second Division, namely Awards 2360, 2361 and 2363 with same organization and this carrier is conclusive evidence **that** there has been no violation of Rule 73 as claimed by the claimant organization.

The present claim is without merit and carrier respectfully requests the Second Division to deny claim in its entirety.

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.

During the oral hearing of Docket 2777, it was agreed to by the parties and sanctioned by the Board, that inasmuch as Dockets 2845 and 2876 are similar to Docket 2777 that oral argument on Docket 2777 would apply to Docket 2845 and 2876.

Since the claims and the parties and the facts are identical, except for dates and names of employes, Award 2952, Docket 2777 is controlling here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of September, 1958.

DISSENT OF LABOR MEMBERS TO AWARDS NOS. 2952, 2953, 2954

The statement in the findings on Award No. 2952 that the language quoted from Award No. 2360 is pertinent and applicable to the instant cases is misleading for the reason that the language quoted refers to Award No. 1656 but makes no mention of the fact that the findings in that award stated that ". . . 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."

In a futile attempt to justify a denial award in each of the instant cases it is stated in the present findings that ". . . there is nothing in the record to support the contention of the employees" that the Stores Department is under the jurisdiction of the car and locomotive department. This statement is made in spite of the fact that the record in each case contains a bulletin put out by the carrier under date of August 27, 1956 showing that, effective September 1st, 1956 the Stores Department would come "under the Supervision and Jurisdiction of the Master Mechanic." The master mechanic, as anyone in the railroad industry is aware, has charge of the Locomotive and Car Department, thus the aforementioned bulletin automatically placed the Stores Department within the Locomotive and Car Department.

Under the facts of record and Rule 83(a) of the controlling agreement the instant claims should have been sustained.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner