

**Award No. 3406
Docket No. 3022
2-CRI&P-CM-'60**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the current agreement the carrier improperly allowed Conductor Beamlar to paint the floor of Caboose No. 17830 while same was on the Armourdale repair track for repairs May 20, 1957.

2. That accordingly, the carrier be ordered to additionally compensate painter D. E. Beckner for four (4) hours at the applicable time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Rock Island and Pacific Railroad Co. hereinafter referred to as the carrier, maintains a car repair shop at Armourdale, Kansas where passenger and freight cars, both wood and steel, are repaired and painted. Carman Painter D. E. Beckner, hereinafter referred to as the claimant, is regularly employed at the Armourdale repair track, as a carman painter, with assigned hours 8 A. M. to 12 Noon; 12:30 P. M. to 4:30 P. M., Tuesday through Saturday, rest days Sunday and Monday.

On May 20, 1957, the carrier allowed Conductor Beamlar to secure paint and brush from the paint shop and paint the floor of caboose 17830 while the caboose was on the Armourdale repair track for repairs. Conductor Beamlar worked approximately four (4) hours painting the floor of the caboose.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make satisfactory adjustment.

hereinabove reserves all painting on and in all rolling stock of the carrier to the carmen and the carrier is obligated to see that such work is performed by carmen, otherwise the agreement is meaningless.

Third Division Award 7793 cited by the carrier in Exhibit A is not pertinent to the instant dispute as it involves a different agreement and a different factual situation, therefore, it deserves no consideration.

In view of the fact that train service employes are not subject to the current agreement, the claimant due to the carrier's failure to police and enforce the provisions of the effective agreement is entitled to be compensated at the applicable time and one-half rate for the number of hours work performed by Conductor Beamler in painting the floor of caboose No. 17830, and your Honorable Board is requested to so find and sustain the employes' statement of claim in its entirety.

CARRIER'S STATEMENT OF FACTS: Under date of May 20, 1957, a conductor, without instructions from the carrier, painted the floor of the caboose which was assigned to him at Armourdale.

An agreement between the carrier and the employes of the carrier represented by System Federation No. 6, Railway Employes' Department, A. F. of L.—C. I. O., Brotherhood of Railway Carmen of America, bearing an effective date of October 16, 1948, is on file with your Board and by this reference is made a part hereof.

POSITION OF CARRIER: In the instant case, the conductor performed this work of his own volition and did so, not for the protection of the caboose floor, but to give it a little color and more homelike appearance. For the work which he performed, the conductor received no compensation from the carrier for such work or material used. Anyone familiar with railroad operations knows that many conductors take special pride in cabooses assigned to them and have often given them special decorations and furnishings.

The carrier, in the first place, did not instruct nor authorize the conductor to paint the floor of caboose assigned to him. We contend, under such circumstances, that there can be no violation of the agreement. Voluntary service, absent direction and authority to perform, cannot be asserted to support a claim. See Award 7793 of the Third Division of the National Railroad Adjustment Board. The work the conductor performed was not required for the maintenance of the caboose and was not necessary but, rather, to add color to his "living quarters" only and, of course, he received no remuneration from the carrier and, therefore, did not receive any monies for any work performed and did not deprive claimant of any earnings.

On basis of the facts, we respectfully request declination of the claim.

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.

Parties to said dispute were given due notice of hearing thereon.

On May 20, 1957 while caboose 17830 was on the repair track at Armourdale, Kansas, undergoing a change of wheels, Conductor Beamler obtained a supply of car floor paint and a brush from the carrier's paint shop and in a period of four hours painted the floor of the caboose.

Rule 110 of the applicable agreement specifies painting of all passenger and freight cars as the work of carmen. The carrier maintains that Conductor Beamler was not instructed or authorized to paint the car floor, and that he did so of his own volition and without compensation.

We think his activities in the circumstances of record which extended over a period of four hours were of such significance that the reasonable inference is the carrier's supervisory force at Armourdale should have known he was usurping a function of carmen, and having failed to prevent it the carrier should be deemed to have acquiesced in his conduct and accepted the benefit of it. A sustaining award is accordingly indicated.

Claimant seeks payment for four hours at time and one-half rate. The proper rate of compensation for time not worked is the pro rata rate.

AWARD

Claim sustained on a pro rata basis.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1960.