

Award No. 4679
Docket No. 4412
2-B&O-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Carrier improperly assigned and used Car Repairer and Carmen Helpers to perform Carmen-Painters work at Glenwood Car Shop, Pittsburgh, Pennsylvania on dates of October 20, 23, 24 and 30 and November 14 and 30, 1961.

2. That accordingly, the Carrier be ordered to additionally compensate the following named Carmen Painters each in the amount of eight (8) hours for the dates listed opposite their respective names:

A. Clark	10-20-61	W. J. Juzwick.....	11-30-61
J. Barilla	10-23-61	D. Zumbo	11-30-61
D. Zumbo	11-14-61	P. J. Provident.....	11-30-61
J. Forsythe.....	10-24 & 10-30-61		

EMPLOYEES' STATEMENT OF FACTS: The above named men, hereinafter referred to as the claimants, are employed by the Baltimore and Ohio Railroad Company, hereinafter referred to as the carrier, as carmen painters regularly assigned as such at Carrier's Glenwood Car Shop, Pittsburgh, Pennsylvania and constitute the rostered employees coming under the Sub-division of Painters in the Carmen's Craft at that Point.

On October 20, 23, 24 and 30, 1961 W. Cochran, employed and holding seniority in the sub-division of other carmen in the carmen's craft, was used to cut stencils for a period of eight (8) hours on each date.

On November 14, 1961 F. Komar, a carman helper, was used for a period of eight (8) hours to paint machinery in the wheel shop.

On November 30, 1961 F. Marchelina, R. F. Keyes and J. J. Berzi, carmen helpers, were each used for a period of eight (8) hours to paint cars in the car yard.

What the carmen's organization is apparently attempting to do now is to read into the contract something that has never appeared in the language of that contract and something that was never intended to appear in that contract.

This Board has already ruled on this pertinent issue:

In this Division's Award 3512 (System Federation 21 (Carmen) v. Southern) (Referee Bailer) claim was made that the Carrier had improperly furloughed "Carman Painter F. C. Haenel, Columbia, South Carolina * * * and assigned other employees (car repairmen) to perform the painters' work. * * *."

The claim in Award 3512 was denied with the following pertinent holdings:

"* * * The subject stenciling work is not within the exclusive jurisdiction of painters in the carman's craft. The transfer of the involved work to other carman under the subject circumstances was not an agreement violation. A denial award is indicated. * * *."

The claim in Award 3512 was denied.

CARRIER'S SUMMARY: The carrier submits that the claim in this case is without merit in both parts 1 and 2.

The carrier submits that the claim in this case in its entirety should be denied.

The carrier respectfully requests that this Division so rule and that the claim in its entirety be denied.

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 employees 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.

The Claimants are regularly assigned Carmen Painters at the Carrier's Glenwood Car Shop, Pittsburgh, Pennsylvania, and they constitute the "rostered employees coming under the Sub-division of Painters in the Carrier's Craft at that point".

The Organization contends that on the dates set forth in the claim, the Carrier improperly assigned Carmen holding seniority in a different seniority sub-division from the Claimants to do the Claimant's work.

The Carrier claims that past practice supports its position; that the work in dispute is not specifically reserved to the Carmen Painters; and that all Carmen Painters were productively employed on the specified claim dates.

The pertinent portions of the controlling Labor Agreement rules involved are as follows:

"RULE 28 — SENIORITY.

Seniority of employes in each craft * * * shall be confined to the point employed in each of the following departments, * * *

Four sub-divisions of the carmen, as follows: Pattern Makers, Upholsterers, Painters, Other Carmen.

RULE 138 — CLASSIFICATION OF WORK.

Carmen's work shall consist of * * * painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint * * *; all other work generally recognized as painters' work * * *

Although there is only one Classification of Work Rule, there are four seniority sub-divisions in the Carmen Craft. Therefore, it logically follows that the job duties set forth therein (Rule 138) must properly come within the scope of one of those four seniority sub-divisions. It could not be successfully argued that the craftsmen coming within the purview of those seniority sub-divisions do not have certain specific job duty entitlements or rights. To rule otherwise, would be to hold that Rule 28 is a nullity.

We doubt if anyone would honestly argue that Upholsterers may properly perform the work of Pattern Makers or Pattern Makers perform the work of Upholsterers. Therefore, it must follow that Carmen do not have any right or entitlement — under the present factual situation — to perform the work of Carmen Painters nor do Carmen Painters have the right to perform the work of Carmen.

Inasmuch as there were Carmen Painters employed at the Glenwood Car Shop, the Carrier is obligated to assign the work in dispute to employes holding seniority in the seniority sub-division of the Carmen Painters. This is true even — as was held in Second Division Award 1269 — if "it becomes necessary for the Carrier to call employes subject to the terms of the agreement and working them on an overtime basis".

AWARD

Claim 1 sustained.

Claim 2 sustained at the pro rata rate of pay but only for the actual work time involved in performing the claimed work.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.