

**Award No. 5009**

**Docket No. 4937**

**2-AT&SF-CM-'66**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'  
DEPARTMENT, AFL-CIO (Carmen)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
(Western Lines)**

**DISPUTE: CLAIM OF EMPLOYEES:**

1 - That under the current agreement other than carman painters are being improperly assigned to paint out and re-stencil old air dates, old packing dates, IDT dates, loading limits and light weights, and paint scorched places on cars from the use of cutting torches on September 5, 1961 and each work day subsequently in the Shops and Trainyards at Cleburne, Texas.

2 - That accordingly the Carrier be ordered to additionally compensate Carman Painter Jack Lee, Jr. four (4) hours each day retro-active Sixty (60) days prior to September 5, 1961, and to continue in like amount until correction has been made at his applicable hourly pro rata rate of pay.

**EMPLOYEES' STATEMENT OF FACTS:** The Gulf, Colorado and Santa Fe Railway Company, hereinafter referred to as the carrier, employs the aforementioned employee, hereinafter referred to as the claimant, along with approximately thirty (30) other carmen painters, all who hold seniority and positions at Cleburne, Texas. The claimant is regularly employed, bulletined and assigned as a carman painter with working hours of 8 A.M. to 12 noon, and 12:30 P.M. to 4:30 P.M., work week of Monday through Friday, rest days of Saturday and Sunday.

Prior to September 5, 1961 and subsequently, carmen employees, who hold no seniority or contractual rights as carmen painters, have been performing such work on railroad cars as painting out and re-stenciling old air dates, old packing dates, IDT dates, load limits, light weights, and have also been performing touch-up painting on freight cars that have been scorched because of using cutting torches. The work in question is being performed within the yards and shops where the carmen painters are regularly employed. In fact,

aside the specific provisions of the Letter of Understanding dated October 13, 1954. All divisions of the National Railroad Adjustment Board have consistently recognized that it is their function to interpret agreements as they are written and they are without authority to add to, take from or otherwise change the provisions of duly executed agreements such as the letter of understanding dated October 13, 1954.

In conclusion the carrier respectfully reasserts that the claim of the employes in the instant dispute is entirely without merit or support under rules of the governing shop crafts agreement and should be denied for the reasons set forth herein.

**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.

The question is whether or not it is improper for Carrier to use Carmen rather than carmen painters to paint out old dates, stencil new dates and paint over scorched places on cars at the Cleburne, Texas, shop.

In support of the claim, it may be noted that the work in question is ordinarily painters' work and that carmen painters have separate seniority rights from other carmen. A written Understanding entered into between Carrier and the General Chairman on about October 13, 1954, recognizes those facts and that it has been the general practice over the system to use carmen to handle this work at the smaller points. In that understanding, the parties agreed that "an effort be made to concentrate, to the extent practicable, all painting and stenciling of cars to painters where employed" but it was "also understood that there could be no objection to carmen in the trainyard to efface and restencil cars, nor to their doing such work on the repair track where there is not a sufficient amount of painting work to warrant the assignment of a painter."

The disputed work is incidental to the Carmen's primary duties and in most instances merely involves recording data as to those duties. Painters are not assigned to the area in question, the South Yard track, but are on duty about 660 feet away. While that distance may not be too great for coverage by a painter, it is of significance when it is considered that the disputed work is not performed at any one time or during scheduled periods. There is considerable question, so far as this record shows, whether it would be practicable to have a painter move back and forth between areas. Under the circumstances, we are not satisfied that Petitioner has established that Carrier has failed to "concentrate to the extent practicable, all painting and stenciling of cars to painters where employed."

Both parties have cited the aforementioned understanding of October 13, 1954, and there is no indication that it has been outdated or terminated.

In the light of these circumstances the claim will be denied. See Awards 4085 and 4846.

**AWARD**

Claim denied.

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

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 9th day of December, 1966.