

Award No. 6041

Docket No. 5867

2-A&S-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 154, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. — C. I. O. (Carmen)**

THE ALTON & SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the Carrier improperly assigned other than Carmen Painters to paint movable benches in 26th Street Shop on October 17, 1968.

2. That accordingly, the Carrier be ordered to make Carman Painter G. C. Blackman whole by additionally compensating him in the amount of eight (8) hours at the time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: The Alton and Southern Railway Company, hereinafter referred to as the carrier, maintains a shop and repair track at 26th Street, East St. Louis, Illinois, where mechanical department, signal, department and maintenance of way department forces are employed.

On October 17, 1968, Signal Department Electricians painted movable benches in the shops which took approximately eight hours labor.

G. C. Blackman, hereinafter referred to as the claimant, is employed by the carrier as carman painter at the 26th Street Shop.

This dispute has been handled with carrier officials up to and including the highest officer designated by the company, with the result he has declined to adjust it.

The agreement effective January 29, 1947, as subsequently amended, is controlling.

POSITION OF EMPLOYES: The employes respectfully direct your attention to Rule 48, carmen's special rule, which reads as follows:

partment is necessarily limited to work in the mechanical department and the duties of the employees in that department are necessarily limited to work performed under the supervision of the locomotive and car departments. The signal shop and the employees and equipment therein are under the supervision of the engineering department, not the mechanical department. The agreement between the carrier and System Federation No. 154 has no application to work performed in the signal shop and cannot form the basis for a claim by a painter in the mechanical department to perform work in the signal shop under the jurisdiction of the engineering department.

For the reasons fully explained above, the claim is not supported by the agreement between the carrier and System Federation No. 154 which includes Painters nor is it supported by past practice. In the absence of either a rule or past practice to support the claim, the carrier submits that the claim should 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 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.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization contends that on October 17, 1968, Carrier authorized and/or permitted Signal Department Electricians to paint movable benches in the shops, contrary to Rule 48, a Carman's Special Rule, which conferred this particular work on Carman Painters. The Organization depends, in part, on an Agreement reached between the parties dated April 26, 1952, which reads:

"Carman will build and Carman Painters will paint lockers and fixtures that are movable and which are not built in as a part of the building."

and:

"The above understanding will apply to the Shops and Shop Yards at 26th Street only."

This work was performed at the 26th Street, East St. Louis, Illinois Shop. Carrier first alleges that this is a Third Party Case, in that the Signalmen performed the work in dispute and that the Brotherhood of Railroad Signalmen have an interest in this dispute and should be notified. As to the merits, Carrier contends that the Agreement does not support a claim on behalf of a Painter in the Mechanical Department for the reason that it does not confer exclusivity on the right to paint work benches on such an employee in the Signal Department. Carrier further takes the position that the Organization shows no past practice in which to support the claim since the work benches in question were never previously painted.

The Board finds that third party notice has been given to Signalmen's Organization and that this Board has jurisdiction to proceed to determine the involved issue.

The Board further finds that there was an agreement between the Carmen's Organization and the Maintenance of Way Organization dated April 26, 1952, and that said agreement pertained only to the Federated Shop Crafts. The Board further finds that the Signal Department is not part of the Federated Shop Crafts and that, therefore, the agreement does not pertain to work performed by Signalmen. The Board also finds that for the reason there is no past practice to be considered, in that the benches involved in this case were painted for the first time on the date of the alleged violation, we must go to the contract provision to determine the issue of whether or not the Signalmen had the right and authority to paint the movable benches located in the Signalmen's Shop. The Board finds that Rule 48 specifically includes the work in question and that Carmen painters were entitled to paint these movable benches.

By this finding, this Board does not in any way intend to state that Signalmen are prohibited from painting objects peculiar only to the Signalmen's Craft, i.e., signal boxes, signals, signal poles, and other apparatus that can only be used by Signalmen in the performance of their duties.

It is doubtful that the moveable benches in question were under the supervision of the Signal Department; Equipment Department has supervision of such items; and, therefore, the Carmen have the right to paint this equipment. This Board finds that only two Crafts are allowed to paint such equipment — Carmen and Maintenance of Way employees. We will follow Award No. 5887 of this Division (Dugan) and sustain the claim in the amount of 8 hours at the pro rata rate.

AWARD

Claim sustained for 8 hours at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1970.