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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6337
Docket No. 6160
2-CM&O-CM-'72

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: (System Federation No. 29, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Gulf, Mobile and Ohio Railroad Company

Dispute: Claim of Employees:

1. That Carrier improperly assigned other than Carmen Painters to paint GM&O Camp Equipment Cars. No. 67266 and 67502 May 11 through May 15, 1970.
2. That accordingly, Carrier be ordered to additionally compensate Carmen Painters W. A. Arnold and I. F. Cantrell in the amount of forty (40) hours each at the time and one-half rate of pay.

Findings:

The Second Division of the Adjustment Board, upon the whole record and 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 waived right of appearance at hearing thereon.

The carrier and claimants essentially established the same facts in this case: The carrier furnishes a number of camp cars as living quarters to construction and maintenance of signal employees and moves these cars in trains to various points where projects are underway. During May 1970 a foreman and signalman were living in one of these camp cars located in Sparta, Illinois. At this time they worked 40 hours of their work week painting the interior of two camp cars. The claimants who are carmen painters were located about 50 miles away in St. Louis, Missouri, and Venice, Illinois. These claimants were available to perform this painting work on rest days or after regular working hours and contend that they were deprived of Carmen Painter's work in violation of the Labor Agreement.

The Classification of Work, Rule 144, states that:

"Carmen's work shall consist of . . . painting . . . all passenger and freight cars."

This rule clearly covers the work involved in this case. "Painting" is a clear and unambiguous term. This rule, however, has an equipment classification which restricts Carmen's work to painting on passenger and freight cars. This limitation raises the question of whether a camp car is included or excluded from this equipment classification.

Rule 144 is ambiguous on this question. The carrier contends that passenger and freight cars are revenue producing equipment and do not include camp cars within their definition. The claimants, on the other hand, argue that special purpose cars like a caboose or camp car are included in this equipment classification. They retain their essential character and function as cars which are built and maintained by Carmen.

When a provision of a Labor Agreement is capable of two or more interpretations the generally accepted analytical procedure in railroad labor relations is to examine past practices to resolve any ambiguities. A past practice is established when a consistent procedure has been followed for a duration of time sufficient to show that the parties have mutually accepted one interpretation of the Labor Agreement. The carrier in this case introduced evidence tending to show that employees occupying camp cars have performed maintenance work including painting. In Signal Engineer Sampson's letter he stated in reference to work on camp cars:

"I have tried numerous times, but without success, to get work done at the shops. I had the cars over to shops for painting for two weeks and only ten feet was done on exterior painting. (Carrier's Exhibit D)."

Apparently this carrier official understood that camp cars were included in the "passenger and freight car" equipment classification, but because scheduling difficulties existed in the shop he and others resorted to self help to perform the maintenance or repair work on camp cars. The organization introduced evidence tending to show that the carrier has paid claims for carmen work performed on camp cars and that carmen actually build and maintain camp cars. The evidence of the Organization and the Carrier establishes an understanding which includes camp cars in the Rule 144 equipment classification of "passenger and freight cars."

Once work has been established as falling within the scope of a work classification rule in a labor agreement it may not be assigned or performed by employees not covered by the contract. This principle has been firmly established in railroad labor relations. See Second Division: Award 1269 where applying screens on bunk car held to be Carmen's work; Award 2214 where painting bunk car held to be Carmen's work; also same in Award 3406.

The Carrier contends that it would be unreasonable to require the claimants to travel considerable distance, incur premium pay and other expenses just to paint two camp cars. As an economic proposition this contention undoubtedly is true. This Board, however, does not have the authority to alter, change or modify the labor agreement negotiated by the parties. The parties under Rule 157 considered this proposition and provided:

"When necessary to repair . . . cars . . . away from shops, carmen will be sent out to perform such work."

See Second Division Award 2214 where the absence of carman in the vicinity of the painted bunk car was held not to be a defense that permits a contract violation.

The Carrier also contends that the claimants suffered no losses so they should not be entitled to any compensation. See Second Division Awards 3807, 3967, and 4082, with Referee Johnson sitting with the Board and the zealous dissents by Labor Members of the Board. These awards were somewhat novel in result for labor relations cases and have been modified by later awards. A contract violation warrants a remedy appropriate to circumstances of the case. Otherwise, the incentive to comply with a labor agreement is absent. See later Second Division Award 4085 with Referee Johnson sitting with the Board and allowing pro rata pay.

A W A R D

The claim is sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois this 7th day of July, 1972.