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NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6559
Docket No. 6387
2-A&S-CM-'73

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

Parties to Dispute: { System Federation No. 154, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { The Alton & Southern Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement the Carrier improperly assigned other than Carmen Painters to paint movable benches and lockers in 26th Street Shop on April 26, 27 and 28, 1971.
2. That accordingly, the Carrier be ordered to make Carman Painter G. C. Blackman whole by additionally compensating him in the amount of sixteen (16) hours at the time and one-half rate of pay.

Findings:

The Second Division of the Adjustment Board, upon the whole record and 1 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 waived right of appearance at hearing thereon.

Claimant is a Carman Painter at Carrier's new Mechanical Department facilities located in East St. Louis, Illinois. Carrier had maintained shop facilities at 26th Street in East St. Louis where employees of the Mechanical Department, Signal Department and Maintenance of Way Department worked, until October 1970. Carrier constructed new mechanical facilities some distance from 26th Street and moved the work to the new facility starting in October 1970. Subsequently, all but two of the buildings at 26th Street were dismantled and the remaining facilities were used exclusively by Maintenance of Way Department employees. On April 26, 27 and 28, 1971 two employees in the Maintenance of Way Department painted machinery, movable benches and lockers in the 26th Street facility.

Rule 48 of the Agreement specifying Carmen's work contains the following language:

"....painting with brushes or spray, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint....."

In 1952 a jurisdictional agreement was consummated between the Carmen and the Maintenance of Way Organization, and accepted by the Carrier, concerning work at the shop yards and buildings at 26th Street in East St. Louis. That agreement reads in pertinent part:

"Maintenance of Way Employees will build and paint lockers and other fixtures that are built in as a part of the building.

Carmen 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.

Carmen Painters will paint machinery and tools in the Shop Buildings and Shop Yards used by Federated Shop Crafts

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

In November of 1970, an agreement was reached between the same parties amending the last paragraph quoted above as follows:

"The above understanding will apply to the shops and shop yards at 26th Street and to the new mechanical department facilities, it being understood this will not apply to the general office building and the Crest Tower."

The Carrier argues that the buildings remaining at 26th Street are no longer shops, are used exclusively by employees represented by the Brotherhood of Maintenance of Way employees, and that therefore the Petitioner has no claim on the work in question. In a related matter, involving almost identical circumstances, (Award 6041) we found that under the 1952 jurisdictional understanding Carmen Painters had the right to paint movable benches located in the Signalmen's Shop, rather than Signalmen painting them.

The language of the November 11, 1970 amendment is clear and unambiguous; it applies the earlier understanding to the new mechanical facilities as well as the 26th Street facilities. Contrary to Carriers contentions it makes no exception of the remaining 26th Street facilities, while excepting certain other properties. This Board has no authority to rewrite Rules or Agreements; we must sustain this claim. However, a reading of the Agreement reveals no provision for penalty payments for work not performed.

It has long been our policy not to assess such penalties in the absence of contractual provisions requiring them. Therefore we shall allow sixteen hours

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pay at straight time rate only.

A W A R D

Claim sustained; claimant shall receive sixteen hours pay at straight time.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

D. 1 at Chicago, Illinois, this 18th day of July, 1973.