

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( System Federation No. 42 Railway Employees'  
( Department A. F. - C. I. O. - Carmen  
(  
( Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. On August 22nd and 23rd, 1973 the Carrier violated terms of the current agreement when they assigned other than Carmen Painters to paint scaffold and/or staging, mounting ladders, and guard rails in the Waycross, Georgia Car Department.
2. That accordingly, the Carrier be ordered to additionally compensate Carman Painters B. J. Lee, B. L. Crawford, and S. W. Sloan eight (8) hours each at their pro rata rate.

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 waived right of appearance at hearing thereon.

In order to provide a work area from which Carmen could apply roofs to new box cars under construction, the Carrier made certain changes on its former Door Shop Building. The building is approximately 100 feet long and 20 feet wide. It is of steel construction, built upon a concrete foundation with a concrete floor. Prior to the changes, the roof of the building was a "Gable" or "A" type roof. The sides of the building were of steel and translucent fiberglass panels and both ends of the building were open. The reconstruction consisted of removing the "Gable" roof, cutting the up-right metal posts by some four feet, and building a lower flat as opposed to Gable "top". The upper panels were removed, and the lower panels remained intact. As the new top of the building was to provide a work area for Carmen, guard rails were installed around its perimeter and an access ladder was added. Maintenance of Way Carpenter Gang and painters painted the building, including the top which was painted with a non-skid deck paint.

The Organization contends that the former Door Shop Building has lost its identity as a building because of the above described changes. The Organization contends that for all practical purposes, the Carrier destroyed the "building". The Organization believes that the structure is now a scaffolding, platform or stage, with its primary purpose being a work area for Carmen to use in installing roofs on freight cars. The Organization contends that the painting of the structure by the Brotherhood of Maintenance of Way Employees should have been assigned to Carmen Painters. The BMW and the Carrier disagree.

The Carmen recognize that they have no claim to the painting of buildings under the Agreement: the Carmen contend that the painting of scaffolds, staging, work platforms, etc., in the shops and yards is work belonging to the Carmen. (Employes Exhibit C, page 2). The Carrier disagrees that the latter described painting is exclusively reserved to Carmen Painters. The fundamental issue to be resolved is whether the structure involved is a stage, platform or scaffolding, as contended by the Carmen, or whether it is a building as contended by the Carrier and the BMW. We find the structure to be a building.

A review of Employes' Exhibit "H" pages 1, 2, 3, 4 and Carrier's Exhibits "D" -1, 2, and 3 leads to the clear conclusion that the structure is a building. It is permanent in nature, built on a concrete foundation, has a concrete floor on which floor is stored materials on pallets and work equipment. (See Carrier's Exhibit D-3). These materials and equipment are sheltered by a flat-top steel roof. Employes may take shelter in the structure as well. The Carrier has the prerogative to utilize and change this building as its needs, present and future, dictates. The fact that the Carrier changed the roof and siding of the building in order to provide a work area for Carmen does not convert the structure into something less than or different from a building. The essentials of a "building" remains, that is, its permanent nature of concrete and steel, its foundation, its concrete floor, its metal support posts, its partial siding and its new roof.

We shall deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of November, 1975.