

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: ( System Federation No. 4, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Carman Painter, Thomas Vernatt, Jr.'s service rights and rules of the controlling agreement have been violated since November 12, 1974 account being unjustly furloughed while others (Carmen) being assigned to Carmen Painter's work in violation of Carmen's Special Rule 154, Understanding Negotiated February 9-22, 1922.
2. Accordingly, Carman Painter, Thomas Vernatt Jr. is entitled to be compensated eight (8) hours, five (5) days each week at Carmen Painter's applicable straight time rate commencing November 12, 1974 and continuing until the claim is satisfactorily disposed of in its entirety.

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 Claimant, Carman Painter Thomas Vernatt, Jr., was furloughed November 12, 1974, in a general force reduction at the Carrier's facility at Barboursville, West Virginia. At the time of his furlough, Vernatt was the only Carman Painter at the Barboursville facility.

There is no dispute that some painting work, both by brush and spray, was performed at intervals following the Claimant's furlough. Provisions for the performance of such intermittent work usually belonging to a specific craft are found in Rule 32 (c) which reads in part:

"(c) Effective November 1, 1964 -- at points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will so far as they are capable of doing so, perform the work of any craft not having a mechanic employed at that point..."

The Organization did not present evidence to show that there was sufficient work to require the Carrier to keep a Carman Painter employed nor that Rule 32 (c) should not be applied to permit Carman to perform the limited and intermittent amount of work required.

The Organization attempts to distinguish, however, between painting by brush and by spray, referring to an Understanding negotiated February 9-22, 1922, interpreting Rule 154 (Carmen's Classification of Work Rule). The Understanding states:

"Paint spraying machines will be operated by painters unless this practice is changed by some ruling or interpretation from the Labor Board."


This is clearly a reservation of paint spraying to Painters -- assuming Painters are part of the working force. The Understanding must yield, however, to the broader concept of Rule 32 (c), just as do other classification of work rules, however explicit in their terms.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of January, 1978.