

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I.O.
((Carmen)
(Duluth, Missabe & Iron Range Railway Company

Dispute: Claim of Employees:

1. That Duluth, Missabe and Iron Range Railway Company is in violation of Rule 80 when on December 3, 1974 the work of cleaning and removing paint from truck sides of Diesel Engine No. 191, preparatory to painting, was assigned to employees of the IBF&O roundhouse laborers at Proctor, Minnesota.
2. That accordingly the Duluth, Missabe and Iron Range Railway Company be required to compensate Carmen Helpers Douglas Slosson and Paul Gagne, Proctor, Minnesota, five (5) hours each at the pro rata rate for December 3, 1975.

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.

The Organization contends that Rule 80 was violated when roundhouse laborers were used to wash trucks on a diesel locomotive preparatory to painting.

Rule 80 provides, in pertinent part:

"Employees regularly assigned to help carmen and apprentices, employees engaged in washing and scrubbing the inside and outside of passenger coaches preparatory to painting, removing of paint on other than passenger cars preparatory to painting ... shall be classed as helpers." (Underscoring added)

A careful review of the record in this dispute compels the conclusion that the Organization has failed to show by substantive evidence of probative value, that the roundhouse laborers were using the particular Oakite cleaning solvent expressly for the purpose of removing paint on the trucks preparatory to painting as instructed by Carrier. The fact that some paint may have chipped during the washing along with grease and grime, was of no consequence. As Carrier points out, Oakite is a brand name that includes a number of cleaning solvent products of varying strengths to be used for a variety of purposes, including washing and paint removing. There is no showing that the particular Oakite product used on the trucks in question was intended as a paint remover.

Thus, on the basis of the evidence, the Board finds that the claim must be denied.

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 21st day of April, 1978.