

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
{ and Canada  
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement when other than carmen-painters were used to perform carmen-painters' work on November 17, 1978 at Portsmouth Shop, Portsmouth, Virginia.

That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carman-Painter, F. L. Wilkins in the amount of four (4) hours at straight time rate of pay, a call, for said violation.

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.

On November 17, 1978, Claimant, a first shift Carman Painter, was instructed to perform touch up painting on an auto rack car which had been repaired on the Carrier's Portsmouth, Virginia repair track. Claimant did not begin painting until approximately 3:00 p.m. At 3:30 p.m. (the end of his shift), Claimant offered to stay and work overtime to complete the painting task. Instead, the Carrier assigned a second shift Carman to complete the touch up painting work on the auto rack car. There are no carmen painters regularly assigned to the second track at Portsmouth. Claimant seeks four hours of pay at the straight time rate contending he either should have been called to perform the work or allowed to complete the project on overtime pay after the conclusion of his regular shift.

The parties have presented this Board with a substantial factual dispute regarding the precise reason why Claimant had been unable to complete the painting prior to the end of his shift. He was instructed to perform the work sometime between 10:00 a.m. and 12:30 p.m. Claimant stated that he was working on a caboose for most of his shift; that other Carmen had not completed all the necessary preparatory work on the auto rack car; and that the area to be painted was too wet. On the other hand, the Foreman asserted that he directed Claimant to begin painting immediately after lunch and if he had promptly started the work, all painting would have been finished prior to 3:30 p.m.

The Organization argues that the touch up painting work was exclusively reserved to Carmen Painters by Rules 15, 26 and 100. It further argues that Claimant commenced the work at the earliest feasible time and because there are not any painters assigned to the second shift, Claimant should have been permitted to continue and complete the painting past the conclusion of his shift. The Carrier contends Claimant improperly procrastinated in starting the touch up painting in spite of receiving express instructions to proceed with the work at 12:30 p.m. Alternatively, the Carrier argues that Carmen Painters do not have the exclusive right to perform all painting work.

This Board does not need to resolve the factual dispute contained in the record before us because the touch up painting job was merely incidental to the repair of the auto rack car. On this property, the Carrier could assign another Carman to perform the minor painting task. Second Division Award No. 6267 (Harr). The painting job was expressly reserved to the Carmen's craft pursuant to Rule 100 but, on this property, Carmen Painters do not have the exclusive right to perform all painting work. Second Division Awards No. 6422 (Shapiro) and No. 6618 (Dolnick). Therefore, regardless of the reason why Claimant did not complete the touch up painting during his regular shift, a Carman did perform the work in compliance with the rules in the applicable Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.