

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(The Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Baltimore and Ohio Railroad Company violated the controlling agreement, specifically Rules 28 and 138, when from the date of August 11, 1984, and continuing, they have assigned 'painters' work, such work in connection with 'modification' of locomotives, to carmen at Cumberland, Maryland, in lieu of 'painters'. Painters at Cumberland, Maryland shown on a separate and individual seniority roster at Cumberland, Maryland.

2. That accordingly, Carrier be ordered to compensate Claimants, 'Painters', H. L. Wittman, Jr., E. Tysinger, R. L. Higson, and R. E. Higson, Jr. as follows: Five (5) hours pay at the straight time rate of pay for each designated locomotive painted from the date of August 11, 1984 through October 8, 1984, as stipulated (Employees' Exhibit (A)) (locomotives listed). Claimants, 'Painters', H. L. Wittman, Jr., E. Tysinger, R. L. Higson, and R. E. Higson, Jr. as follows: Five (5) hours pay at the straight time rate of pay for each designated locomotive painted from the date of October 8, 1984 through January 8, 1985, as stipulated (Employees' Exhibit (F), page 1) (locomotives identified) such compensation to be equally divided among Claimants named above. Claim continuing until resolved.

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 employees 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.

This Claim involves employees of the Carman's craft being assigned to paint certain locomotives commencing in August, 1984. The Carrier maintains four separate seniority lists for Carmen, those being Patternmakers, Upholsters, Painters, and other Carmen. The work in question was not assigned to Carmen in the Painter classification but to Carmen on other seniority lists. This work was performed in connection with the Carrier's need to modify locomotives due to the elimination of cabooses.

The Organization argued that the assignment of work in this case was in violation of Rules 28 and 138. These Rules state in pertinent part:

Rule 28: "Seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following departments, except as provided in special rules of each craft. . .

Four subdivisions of carmen, as follows:

patternmakers
upholsters
painters
other carmen..."

Rule 138: "Carmen's work shall consist of... painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing of paint (not including use of sandblast machine or removing in vats); all other work generally recognized as painters' work under the supervision of the locomotive and car departments, except the application of blackening to fire and smoke boxes of locomotives in engine houses;..."

The Organization stated the work was assigned to a Carman, not of the Painters classification. The Carrier's Shop has Painters assigned to it, and they have the exclusive right to perform this work. Other Carmen do not have the right to infringe on Painters' work. The Organization argued their Claim is not vague. The Carrier was well aware of the locomotives in question, and this was in the nature of a continuing violation under Rule 33, Section 2 which allows claims to be filed for continuing violations of any agreement and fully protects the rights of the Organization if there is a violation found and if it continues. The Organization noted its Chairman did update his Claim to include alleged violations which occurred after the initial Claim. The Organization stated Painters are not allowed to perform other Carmen's work, and Carmen are not allowed to perform Painters' work. The Organization cited numerous Awards, some on the property, in support of their Claim.

The Carrier argued that the work of locomotive conversions which began in August of 1984 was assigned along craft lines. The work in question was performed by individuals of the Carman's craft, therefore, it was appropriately assigned. In addition, the Carrier stated the Claim is vague and indefinite; the Organization amended their Claim that was originally submitted on the property, which incorporated two Claims into one without the concurrence of the Carrier; and therefore, it is substantially different than the Claim that was handled on the property. The Carrier noted Claims can go back only 60 days. The Carrier further argued that Rule 138 entitles Carmen to paint, and Carmen were assigned to this work. They also noted the work is incidental and the burden of proof is on the Organization. There is no showing that the work is exclusive to the Carmen Painters classification. Finally, the Carrier claimed the work in question only took 2 hours per locomotive, not the 5 hours as claimed by the Organization.

The Board, upon complete review of the evidence, finds the Claims in this case to be sufficiently clear as to meet the requirements of the Rule in the controlling Agreement. The Organization did list the locomotives involved and the work in question, and a reading of the correspondence in this case indicates the Carrier knew full well what the Organization was claiming. With respect to the combining of Claims, it is true that the Carrier did not concur with the Organization in the combining of Claims. However, both Claims involved the same type of work under the same circumstances as the original Claim. The Board notes that there is a duplication of Engines 7613 and 7614 on the two Claims. This is in the nature of a continuing violation as provided for in Rule 33, Section 2. In addition, the Board notes there is a longstanding practice in the railroad industry that, where similar claims were filed, the lead claim will be progressed through the grievance procedure, and other claims will be held in abeyance pending the settlement of the lead claim. In this case at least, the Board finds no difference as to the result.

With respect to the merits of the case, the Board finds the arguments put forth by the Organization to be persuasive. The Carmen are separated into four seniority divisions. Painters are not allowed to perform other work assigned to the Carmen's craft, and the reverse should be true. Clearly, the work performed in this case is Painters' work, and the Board finds it should have been assigned to Carmen Painters in accordance with the Rules. This is particularly true in light of the Awards, some of which are on the property, assigning work of this nature to the Carmen Painter craft.

With respect to the amount of the Claim, the Organization claimed 5 hours per locomotive from the beginning. The Carrier responded that the work in question took no more than 2 hours. Neither side presented any proof as to the actual time involved, and because the burden of proof is on the Organization, the Board has no choice but to utilize the Carrier's estimate of time. Therefore, the Claim will be sustained for 2 hours per locomotive. Claims involving Engines 7613 and 7614 should not be duplicated.

Form 1
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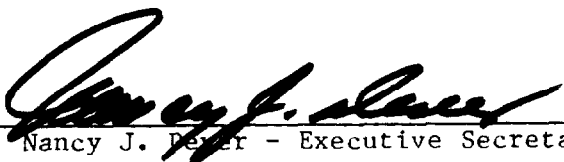
Award No. 11219
Docket No. 11187
2-B&O-CM-'87

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1987.