

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

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (
(Seaboard System Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard System Railroad Company violated the controlling agreement, particular Rules 100, 102, 15 and 26(a) and 26(d), when they moved two Carmen Helpers on or about March 28, 1983 from their Carmen Helpers' work and placed them on the Painter Helpers' work of sandblasting cars at the scrap dock at Waycross, Georgia in preparation for painting of these cars, while Painter Helpers H. R. Welch, Jr. and R. W. Day, Jr. of Waycross, Georgia were on furloughed status and should have been called in to perform this work which by historical practice and contract has always been the work of the Painter Helpers.

2. That accordingly, the Seaboard System Railroad be ordered to pay Painter Helpers H. R. Welch, Jr. and R. W. Day, Jr. eight (8) hours per day, forty (40) hours per week from March 28, 1983 and continuing until they are restored to their rightful positions, or until the Carmen Helpers are removed from performing the Painter Helpers' work.

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.

In early 1982, Claimants were furloughed along with many other employees, as part of a reduction in force at Carrier's Waycross Georgia shop. On March 28, 1983, while Claimants were on furloughed status, Carrier placed two Carmen Helpers in the Painter Helpers' gang that was assigned to sandblast freight cars at the Waycross scrap dock for the purpose of preparing those cars for repairs and painting. After the employees sandblasted the cars, they applied a primer coat of paint to the cars before they were moved to the heavy repair shop for repair and painting.

The instant Claim alleges that Carrier violated, inter alia, Rule 100, when it assigned to Carmen Helpers work purportedly accruing to Painter Helpers. Rule 100 states as follows:

"RULE 100 -- CLASSIFICATION OF WORK

(a) Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planing mill, cabinet and bench carpenter work, pattern and flask making, and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, level cars, hand cars and station trucks; building, repairing, and removing and applying wooden locomotive cabs, pilots, pilot beams, running boards, foot and headlight boards; tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears, doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); all other work generally recognized as painter's work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, write-up men, wreck derrick engineer repairers; all steam and mechanically operated cranes on rails, except overhead electric cranes; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work as provided in Rule 27; and all other work generally recognized as carmen's work.

(b) The above classification of work is designed to define the work of Carmen's craft, set out in Paragraph 'a', Rule 15. In consolidation of the classification of work for each class of Carmen's work in one rule, it is not the intent or purpose to changed the established rate of pay of any employee."

The Organization also relies on Rule 15, which states in pertinent part:

"There shall be four roster-divisions of Carmen's Craft,

Upholsterers
Painters
Roadway Shop Carmen
Other Carmen

(c) Senior men in their respective classifications shall have the opportunity to exercise their seniority when vacancies occur, or new jobs are created, "

It is the Organization's position that while the work of the four divisions of the Carmen's craft is all set forth in Rule 100, within that Rule the various work defined belongs only to the separate divisions of the Carmen's craft. Thus, the section of Rule 100 which states ". . . ; painting, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sandblast machine or removing vats); all other work generally recognized as painters work ;" is, in the Organization's view, work which has always been recognized as exclusively the work of the Carmen Painter's division of the Carmen's craft. Moreover, the Organization argues that Rule 15 clearly separates the seniority rosters and the work of the four different divisions of the Carmen's craft. As a result, employees on the Carmen's seniority roster cannot and do not have the right to exercise their seniority on jobs belonging to Painters, since they are not under the same seniority and classification as the Painters. In this regard, the Organization states, "The Carrier's actions . . . which brought about the instant claim were as much a violation of our contract as if they were to have assigned a Carman Helper to assist a Machinist or Electrician."

In further support of its position, the Organization refers the Board to Second Division Awards 6359; 4679 and 2459.

Carrier contends that the work at issue is not the exclusive right of Painter Helpers and that there is no justification or contractual basis to support the Organization's contention that the two furloughed Painter Helpers should have been recalled to service. In Carrier's view, it retains the right in the absence of any contractual prohibition, to assign work as may be considered appropriate for the efficient operation of its business.

Carrier further asserts that it is significant to note that on this property, in contrast to the Awards cited by the Organization, neither Rule nor practice reserves the disputed work to the Painter Helper classification. Sandblasting has been performed by Carmen Helpers since the existence of such work on the property Carrier submits. It was therefore incumbent upon the Organization to establish that the work at issue was exclusively performed by the Painter Helpers craft, and its failure to do so compels the conclusion that this Claim must be denied.

The Board has reviewed all of the evidence in this case, and finds that the Organization has met its burden of proving the Rule violations alleged here. This Board has had occasion to previously consider a nearly identical factual situation in Second Division Award 2459. In sustaining that Claim, the Board held:

"At Concord Freight Shop two seniority rosters are maintained for helpers to the carmen craft, one designated as car helpers' roster and one designated as painter helpers' rosters Claimants' hold seniority on the painter' helpers' roster and on the dates specified in the claim was furloughed. On those dates two helpers on the car helpers' roster were used to prepare box cars for painting.

There is but one classification of work rule for carmen helpers, Rule 111*, and, since it is entitled Carmen Helpers, the carrier contends that the work specified belongs to those helpers on the car helpers' roster. We note that there is also but one classification of work rule for carmen, Rule 109*, craft. Certainly those craftsmen have seniority preference to the performance of the work specified in Rule 109 on the basis of the subdivision in which they hold seniority.

We see no reason for a different interpretation of Rule 111. Accordingly, we find that a helper on the painter helpers' roster has a seniority preference to work of a painter helper specified in Rule 111, even though the work has been and may be performed by other helpers when no painter helpers are available. We also find that the work here involved was properly the work of painter helpers. Claim sustained."


(* Rule 111 referred to is the same as Rule 102 relied upon herein, and Rule 109 is the same as Rule 100 in the instant case.)

Carrier has attempted to distinguish the above case from the instant matter by suggesting that, unlike here, no evidence of past practice established that the other subdivisions within the craft historically performed the disputed work. But there is no evidence of past practice in this case either, we note. The Carrier's unsupported allegations do not constitute proof. Also see Second Division Award 4679. Accordingly, we will rule to sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest. 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1987.

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