

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/Division of TCU
(Southern Railway Company

STATEMENT OF CLAIM:

1. That the Southern Railroad Company violated the controlling Agreement when work belonging to the Carmen/Painters Craft was improperly assigned to employes other than employes of the Carmen/Painters Craft at Coster Shop, Knoxville, Tennessee on Sunday, May 20, 1990.

2. That accordingly, the Southern Railroad Company be ordered to compensate Painter L. D. Carter eight (8) hours pay at the overtime rate of time and one-half that was in effect on the date of the aforesaid 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 employe or employes involved in this dispute are respectively carrier and employes 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.

As Third Parties in Interest, the International Brotherhood of Firemen and Oilers and the American Railway and Airway Supervisors Association were advised of the pendency of this dispute. The International Brotherhood of Firemen and Oilers filed a response with the Division; the American Railway and Airway Supervisors Association chose not to file a Submission.

On Sunday, May 20, 1990, the Carrier assigned the Paint Foreman and a Laborer to paint the floor of the System Wheel Shop at the Coster Shop Complex. The Organization maintains that such work belongs to the Carmen Painters and they should have been assigned the work. There is no disagreement between the parties with respect to the work rules and that the painters were entitled to the work. In fact, statements of the management people involved admit that the named parties "did work in the painter capacity on

May 20, 1990, at the Wheel Shop." Carrier's defense resides in the manner in which overtime work is assigned on the property. An Overtime Board is kept and the Organization has a Painter Representative for the purpose of keeping the overtime list for the painters. When overtime work is needed the representative of the painters makes the calls to the painters. If a sufficient number of painters do not accept the needed overtime, the Organization contends the most junior painter must then be assigned the work by Carrier.

In its Submission, the Carrier maintains that on May 18, 1990, the Painter Representative was notified that three painters were needed on May 19, or May 20, 1990, to paint the Wheel Shop floor on either the first or second shift. They were advised by the Painter Representative that he was unable to get any painters to perform the overtime work and hence the decision to use other than painters was made. The Organization takes exception to that decision. In response to an inquiry from the General Foreman regarding the time claim under consideration, the Painter Representative advised that he was called on May 18, 1990, to supply men to work overtime on May 19, or May 20, 1990. He was asked by the Paint Foreman to furnish three painters to work on those days. However, he was told that the overtime needed would be painting the interior of clay cars. After calling the painters and explaining the work to be done, he informed the Paint Foreman that he could not secure anyone to work on those days. Accordingly, no painter was obtained for the job of painting the Wheel Shop floor.

This Board is in no position to judge the credibility of witnesses. At the same time, we should do our best to dispose of the problem before us in the interest of the parties.

A careful review of the underlying documents which support the parties Submissions indicate that there was a breakdown in communications. Carrier offered statements which state that the Painter Representative was unable to get any volunteers to work on the dates under consideration. They do not claim that the work offered was to paint the floor at the Wheel Shop. Such a position is congruent with that of the Organization. The Painter Representative stated that he could obtain no volunteers on the basis of the work he was offered, namely to paint the interior of clay cars. It is quite understandable that volunteers might turn down some jobs but accept other more attractive work. On the basis of the foregoing and the entire record this Board concludes that the job of painting the floor of the Wheel Shop was never offered to the painters, and therefore, we will sustain the claim.

A W A R D


Claim sustained.

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Award No. 12422
Docket No. 12398-T
92-2-91-2-198

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1992.