

CORRECTED

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Form 1

Award No. 12486
Docket No. 12294
92-2-91-2-84

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/
(Division of TCU
(CSX Transportation, Inc. (formerly
(the Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter referred to as "carrier") violated the service rights of Painter K. Estep (hereinafter referred to as "claimant") and the provisions of Rule 11, 32 and 154 of the controlling agreement when on April 22, 1989 the carrier ignored the overtime board and worked ten (10) employes from an outside concern to prepare the new paint facility for painting in violation of the aforementioned agreement rate.

2. Accordingly, the claimant is entitled to be compensated for twelve (12) hours at the applicable time and one-half rate 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 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.

On May 15, 1989, a Claim was filed by the Local Chairman on behalf of Claimant at the Carrier's Raceland Car Shop, Russell, Kentucky. Allegation was that the Carrier violated Rules 11, 32, and 154 of the Agreement when it hired an outside contractor "...on second shift to prepare the new paint Booth for painting" on April 22, 1989. According to the Claim, it took ten men working twelve hours each to do the work. The Claim was later changed to include twenty Painters of the Carmen craft who were working at Raceland.

In denying the original Claim the Carrier states that it is true that a contractor by the name of Mobile Pressure Cleaning had been hired to remove the overspray on the Raceland Shop spray booth and that this company had done this work for the Carrier on two previous occasions. According to the Carrier, the work at bar needs equipment which the Carrier does not possess. This is a specialized highway truck with mounted equipment which produces a water blast of "...ten thousand pounds per square inch." After the overspray was removed on April 22, 1992, according to the Carrier, Carmen Painters "...recoated the paint booth with W. B. Filmite."

Rules 11, 32 and 154 state the following, in pertinent part:

"Rule 11--Effective June 1, 1923.

(c) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally.

UNDERSTANDING--Effective July 1, 1948.

(3) There will be an overtime call list (or call board) established for the respective crafts or classes at the various shops or in the various departments or subdepartments, as may be agreed upon locally to meet service requirements, preferably by employees who volunteer for overtime service. Overtime call board will be kept under lock and key available to view of employes. Overtime call list will be kept under lock and key and made available to employes when necessary."

"Rule 32--(a) Effective November 1, 1964--None but mechanics or apprentices regularly employed as such shall do mechanics' work as per the special rules of each craft except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employes employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts."

Rule 154--(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, lever cars, hand cars and station trucks; building, repairing and removing and applying 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 with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast 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 blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work.

(b) It is understood that present practice in the performance of work between the carmen and boilermakers will continue.

UNDERSTANDING--Negotiated February 9-22, 1922.

Paint spraying machines will be operated by painters unless this practice is changed by some ruling or interpretation from the Labor Board."

In response to the Carrier's denial at first level of handling, the Local Chairman states the following:

"Contrary to your statement the Claimant could and should have performed the work in question. The Carrier has at its disposal suitable methods of removing the build-up of paint overspray from the paint booth (sandblasting, scraping, chemical removal) besides the use of high pressure water blasting. Furthermore, the Carrier has at its disposal the ability to procure the so-called 'specialized' water blast equipment at a considerably cheaper cost than sub-contracting this work."

The Organization further argues that removal of overspray paint from paint booths is and always has been recognized as work covered under the Classification of Work Rule that it normally and traditionally was performed by Painters and this is the practice throughout the system.

The Carrier's response to this line of argument by the Organization is that the contractor did not "prepare" the Paint Booth for painting, but it cleaned the Paint Booth. The Carrier states the following:

"The purpose of the work performed by Mobile was not to prepare the paint booth for painting, it was to clean the walls and ceiling of the paint booth, not because it needed painting, but because it needed cleaning. As cars are painted automatically in the paint booth the overspray accumulates on the walls and ceiling and if not removed, the weight of the accumulation would cause it to drop onto and ruin the finish of cars being painted below. This cleaning process is not work which its painters have done in the past, and the carrier does not possess the necessary equipment to do the cleaning. As Mr. Brigman advised the Local Chairman, the cleaning requires specialized equipment designed to blast with a pressure of ten thousand pounds per square inch. In addition, Mobile used specialized equipment, which the Carrier does not possess, which is necessary to collect the used water with the overspray contaminants and to dispose of it properly as required by the Kentucky Environmental Protection Agency.

The necessity of utilizing Mobile was not because the paint booth needed painting, it was because it needed cleaning. After the paint booth had been water blasted, a coating, called 'Filmite' is applied to the walls and ceiling by Carrier's painters. The coating causes the overspray to be more easily removed by water blasting. Thus, it is the necessity to clean the walls and ceiling which causes the subsequent application of the coating. If it were not necessary to clean the paint booth, the Filmite would not need to be replaced.

The Organization's contention that the Carrier has other means of removing the overspray from the paint booth, such as (sandblasting, scraping, chemical removal), is ill-founded and not supported by knowledge of the paint facility and its operation. The Carrier invested about \$5 million to construct a modern Paint Shop at Raceland. The design concept did not include shutting down the painting process for the extraordinary length of time it would take to employ the antiquated method of erecting scaffolding and placing men thereon to scrape and chisel the overspray by hand. It was designed to avoid the damage to the walls and ceiling of the paint booth that sand blasting would cause; and it was designed to avoid the use of chemicals, which can introduce new problems and expense relating to safety and to proper disposal methods.

The methods suggested by your Organization would, understandably, be more labor intensive; but in the exercise of its right to manage its business prudently, the Carrier does not have to employ more expensive procedures when less expensive ones are available so long as it is not restricted by the Agreement with its employees."

The issue before the Board is whether the operant Rules cited by the Organization cover the cleaning of the paint booth at Raceland Shop, and more specifically, whether they cover the cleaning of the technologically new type of booth which the Carrier installed at large expense which needed a special process in order to be prepared for the application of Filmite by the craft's Painters.

The Organization argues that preparing paint booths had been traditionally done by the craft throughout the system. That is not contested by the Carrier. What the Carrier contests is that the new type of paint booth which it installed at Raceland had never been "cleaned" by this craft and that to do so by the older methods of sandblasting, scraping or chemical removal would not only be potentially physically destructive to the new equipment, but that the time it would take such labor intensive procedures to be used would be unnecessary downtime of expensive equipment. The argument, and distinction, that the Carrier makes between "preparing" and "cleaning" the new booth is neither addressed nor answered by the Organization on property. The Carrier argues that the craft still did the "preparing" of the paint booth, as the Claim requests, by applying Filmite.

Do the Rules cited by the Organization require the Carrier to use this craft to "clean" the new booth (in addition to applying the Filmite preparation), with additional, expensive equipment which it would have to purchase or lease, and then train members of the craft to use such equipment which, practically speaking, would be used infrequently? Examination of the language of the Rules at bar indicates that if there is a contractual imperative which requires the Carrier to teach this craft to use new machinery to clean the new booths it would be found in Rule 154. That Rule explicitly addresses the painting of passenger and freight cars, painting with brushes, varnishing, surfacing, decorating and so on, and it states that Carmen shall do "...all other work generally recognized as painters' work under supervision of the locomotive and car departments..." Since the parties specifically disagree over the application of this latter language to the cleaning of the new paint booth, the Board must look to past practice. There is none per se which supports the Claim since the technology used to clean the booth is different than the old paint removal technology. There is no evidence that the craft had ever done this specific kind of work. Further, the Carrier notes that this is the third time that it had contractors come in and do the work at bar albeit the application of the Filmite, prior to the re-use of the paint booth, remains Painters' work. Although the Organization always has the privilege and right to police its Agreement, it is undeniable that a past practice had set in at this shop by which the Carrier had cleaned the paint booth with contractors.

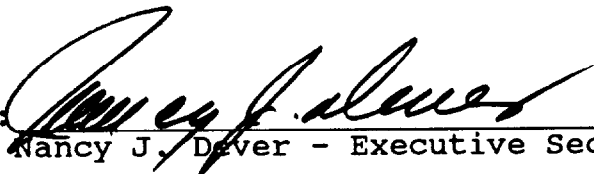
On balance, the Board must conclude that the Organization has insufficiently met the burden of proof that the idiosyncratic, new work of cleaning the new paint booth necessarily belongs to its craft. For the craft to have prevailed in this case, the Carrier would have had to initiate new training, with new equipment, to handle new work, done quite infrequently, which had not been done by the craft in the past. In short, neither the general language of Rule 154, nor any identifiable past practice relative to the kind of work specifically at bar in this case, supports the position of the Organization in this Claim and the Board must rule accordingly.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1992.

