

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12676
Docket No. 12418-T
94-2-91-2-217

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen Division/TCU
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(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

- "1. That the Grand Trunk Western Railroad Company violated the terms of the current agreement when they assigned the work of painting to a member of the Machinist Craft on August 3, 1990.
2. That accordingly, Grand Trunk Western Railroad Company be ordered to compensate Carman M. Burtch in the amount of three (3) hours pay at the time and one-half rate."

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.

As Third Party in Interest, the International Association of Machinists and Aerospace Workers was advised of the pendency of this dispute, but did not file a Submission with the Division.

This claim arises out of an incident that occurred on August 3, 1990. On that date, a member of the Machinist Craft was instructed by his immediate supervisor to paint a "Ride Control Bolster Friction Casting Compressor." It took three (3) hours to complete the task. In pursuing this claim, the Organization relies on the following Rules:

"Rule 27 - Assignment of Work

- (a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed. This rule does not prohibit foremen in the exercise of their duties to perform work.

Rule 105 - Classification of Work

* * *

- (4) Carmen Painter's work shall include painting, priming, surfacing, applying wood and metal preservatives, glazing, varnishing, sanding and finishing, decorating, lettering, cutting stencils, applying tape (scotchlite), removing paint, applying non-skid material, and all other work generally recognized as Carmen Painter's work.
- (5) Carmen will perform all other work generally recognized as Carmen's work, irrespective of where Carrier elects to perform such work."

The Organization submits that the Claimant is subject to the protection afforded in Rules 27 and 105. The Organization holds that regardless of the method used to paint the compressor, the work took three hours to complete and comes under the Agreement of the Carmen Painters. Regardless of the length of time the job took, there is not justification for violation of the Agreement. Claimant is entitled to compensation sought because he was off duty and thereby available to perform the work in question. The Organization contends that since the work in question is specifically stated in Rule 105, then it flows to the Carmen by the Agreement.

It is the Carrier's position that the Agreement does not give Carmen the exclusive right to paint. The Agreement simply does not give Carmen the exclusive right to paint tools, nor is that even arguably work recognized as Carman's work. The Carrier refers to Second Division Award 12072 in support of its contention that general language such as the language in the Rule in question cannot be relied upon in support of exclusivity of work. The burden proof, it held, was on the Organization to show that the aggrieved work is reserved to the craft by system-wide practice.

The Carrier also states that the Organization failed in its burden of proof; that the Organization rested its claim after it

made the assertion that the classification of work Rule had been violated; and that it would be inappropriate to sustain a claim when the Organization has not met its burden of proof. Carrier refers to Second Division Award 11084, where the Organization relied on general agreement language alone and thereby failed to substantiate its claim that the Agreement had been violated.

The Carrier also states that the claim is excessive and unsupported by the provisions of the Agreement noting that Claimant was under full compensation on the date of the occurrence. According to the Carrier, the Organization alleged that Claimant would have been available for overtime on that date. The Agreement contains no penalty provisions for alleged violations. Carrier claims that the Organization arbitrarily claimed three hours punitive pay as the penalty for the alleged Rule infraction. The Carrier refers the Board to Second Division Award 11329 which held that where Claimants are fully employed and no loss of earnings had been demonstrated, no monetary damages will be awarded.

The Board notes that the burden of proof regarding exclusivity rests entirely on the Organization. The Organization provided no proof that painting was exclusively the work of Carmen Painters on a system-wide basis. Nor did the Organization pursue the issue of past practice. Reliance on general rules is not considered proof of exclusivity or past practice, and the Carrier provided Awards to support its argument. Even if a violation occurred, the Agreement contains no penalty provision which would support payment of the amount claimed.

The record establishes that painting at this location has not been exclusively performed by Carmen. On the basis of the foregoing, this claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin / lw
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 6th day of April 1994.