

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13243
Docket No. 13177-T
98-2-96-2-81**

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

**(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union**
PARTIES TO DISPUTE: (
**(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

- 1. That the Chesapeake and Ohio Railroad Company (CSX Transportation, Inc., (hereinafter referred to as ‘carrier’) violated the controlling Shop Crafts Agreement specifically Rule 154 (a), when the carrier assigned a non carman employee from the Maintenance Department to perform work exclusively reserved to the carman craft.**
- 2. Accordingly, the carrier be instructed to pay carman D.E. Smith, ID #623204, (hereinafter referred to as ‘claimant’) eight hours at the applicable carman overtime 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

As Third Party in Interest, the International Association of Machinists and Aerospace Workers (IAM) was advised of the pendency of this dispute, but chose not to file a Submission with the Board. As Third Party in Interest, the Brotherhood of Maintenance of Way Employes (BMWE) was advised of the pendency of this dispute and chose to file a Submission with the Board.

On June 6, 1995, a B&B Mechanic assisted by a Machinist assembled four wood picnic tables. The work consisted of assembling the tables, benches and umbrellas using prefabricated materials. The picnic tables were purchased by the Carrier as a kit consisting of a pre-assembled table top with holes drilled for cross-bracing, two sets of legs, and pre-cut and pre-drilled bench bracing to assemble to the cross-braces to place the pre-cut bench seats on the frame.

The Organization contends that the work is reserved to its craft by Classification of Work Rule 154. In claiming this work, it relied upon its construction of Rule 154, and a statement dated August 21, 1995 signed by 11 employees of the Carman Craft that the work at issue had been exclusive to its craft. It also relied on a statement from the B&B Mechanic who was one of the employees who performed the disputed work.

Rule 154 (a) on which the Organization relies provides as follows:

“(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 flash 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; oxy-acetylene, thermit and electric welding on work generally recognized as carmen's work; and all other work generally recognized as carmen's work." (*Emphasis added*)

The Board finds that the Organization met its burden of proof. At the outset, we are in agreement with the Organization that Second Division Award 3862, relied upon by the Carrier, is not on point with the work at issue in this claim. The claimed work here was more than merely replacing wooden shelving formerly used. The Organization's position is given further substance by the statement of 11 employees of the Carman Craft dated August 21, 1995, attached to the Organization's letter of August 21, 1995 to the Plant Manager of the Huntington Locomotive Shop. This statement asserted that the type of work at issue had been performed exclusively by Carmen at the Huntington Shop. If this statement was not factual, the local manager very easily could have provided documentation that other crafts performed this type of work in the past. He chose to leave this evidence unchallenged. This leads the Board to the conclusion that it is factually correct. In summary, we find credible evidence that the work covered in this claim property belongs to Carmen.

With respect to the amount of damages, we agree with the Carrier that the claim is excessive. The Organization failed to cite any Rule that legitimizes a punitive rate of pay. As held by many past Awards of the Second Division, pay for work not actually performed is limited to the straight time or pro rata rate of pay. The pro rata rate "is the measure of value of work lost." See, among many Awards, Awards 2956, 3128, 6359 and 7355.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 30th day of March 1998.