

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13408
Docket No. 13208-T
99-2-96-2-120**

The Second Division consisted of the regular members and in addition Referee Margo R. Newman 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) and paragraph 2 of the February 2, 1955 Memorandum Agreement, when carrier assigned other than carmen painters to perform work exclusively reserved to the carman painters craft.**
- 2. Accordingly, the carrier be instructed to pay carman painter R.J. Irvin, ID #626251, (hereinafter referred to as ‘claimant’) three hours at time and one half carman painters 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 Brotherhood of Firemen and Oilers was advised of the pendency of this dispute, but it chose not to file a Submission with the Board.

This claim protests Carrier's September 12, 1995 assignment of a Laborer employed under the Fireman & Oiler's Agreement, to paint equipment and machinery in the Engine Rebuild Area of the Huntington Locomotive Shop. The record reflects that the assignment was for a period of three hours, up to half of which may have been spent in cleaning and preparing the surfaces for painting.

The Organization argues that such work is reserved to its craft under the language of Rule 154 (a) and Paragraph 2 of the February 2, 1955 Memorandum Agreement, which inter alia, provide that Shop Craft Painters will paint all equipment . . . and machinery, and that such painting shall include ". . . painting with brushes, varnishing, surfacing, decorating . . . and removing paint (not including use of sand blast machine or removing in vats)." It contends that the Incidental Work Rule is not applicable to the Fireman & Oilers, and, even if it were, this work exceeded the two hour maximum time limit for simple tasks included therein, as cleaning and preparation have been historically considered part of the painting work assigned to Shop Craft Painters. It supports its request for payment at the overtime rate by citing Second Division Awards 12601 and 11102.

Carrier contends that painting is a simple task covered by Article V (Incidental Work Rule) of the 1991 Imposed Agreement (citing Second Division Award 12774) and that the record establishes that the actual painting work took less than two hours to perform on the date in question. It observes that cleaning work is not reserved to Painters and has been assigned to others. Carrier argues that either there is an irreconcilable dispute in facts requiring dismissal of the claim (citing Second Division Award 6856) or that the Foreman's statement concerning the actual length of the painting task stands un rebutted. Carrier avers that the penalty is excessive because it requests overtime pay for work not actually performed.

A review of the record reveals that the real issue in dispute is whether cleaning and preparation work involved with equipment and machinery to ready it for painting is to be considered part of the painting work itself. The Board finds no irreconcilable dispute of fact, because it is clear that the Laborer worked for three hours on the September 12, 1995 painting assignment herein, and there has been no challenge to the assertion that up to half of his time was spent cleaning and preparing the surfaces for painting. Further, there is no merit to the Organization's contention that the Fireman & Oilers are not covered by the Incidental Work Rule, and the Organization does not seem to take issue with the fact that the task of painting meets the criteria of a simple task that does not require either special training or special tools.

Therefore, the merits of this claim must stand or fall on our determination of whether the cleaning and preparation of equipment and machinery for painting is properly considered part and parcel of Painters' work under Classification of Work Rule 154 (a). That Rule clearly states that the removal of paint and surfacing is part of a Painter's job, as well as all other work generally recognized as Painters' work. The Board is of the opinion that while general cleaning may well have been assigned to Laborers by the Carrier in the past, part of any painting assignment necessarily involves the cleaning and preparation of the surface to be painted. There is no dispute that the type of cleaning engaged in by the Laborer on September 12, 1995 was for the purpose of readying the equipment for painting. Thus, we are of the opinion that it must be properly considered part of the painting assignment. Because it is undisputed that the painting (and preparation) in issue took over the two hours permitted for a simple task assignment under the Incidental Work Rule, we find that the Carrier violated Rule 154 (a) and the February 2, 1955 Memorandum Agreement in this work assignment.

With respect to the appropriate remedy, it has been firmly established by the Board that the pro rata rate is the proper rate of compensation for work not performed, and is the appropriate measure of value of work lost. Second Division Award 6359. Accordingly, we direct that the Claimant be compensated for the three hours lost work opportunity on September 12, 1995 at his pro rata rate of pay.

AWARD

Claim sustained in accordance with the Findings.

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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 16th day of June 1999.