

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13427

Docket No. 13327

99-2-98-2-11

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

(Brotherhood Railway Carmen, Division of Transportation
(Communications International Union

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (former Chesapeake & 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 on December 19, 1996 the Carrier allowed and or permitted other than Carmen Painters at Huntington, West Virginia to perform Painters duties.
2. That, accordingly, the Carrier be instructed to compensate Carman Painter D. K. Hall #184300, eight hours pay at Carman Painter’s rate and one half for the 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.

On the claim date, an Engine Carpenter was instructed to assist Carman Painters with their work on Locomotive 7583.

This claim was filed with the Organization contending that the Engine Carpenter performed Carman Painter's work while Claimant was available off the Painter's Overtime Board. The claim is for eight hours at the time and one-half rate.

The Carrier argues that not only is the claim excessive, the Engine Carpenter spent a maximum of two hours doing Painter's work, which is permissible under the Incidental Work Rule.

The Organization countered the excessive argument by furnishing a statement from the Engine Carpenter who stated that he worked a full eight hours doing Carman Painter's work. The Carrier, in turn, furnished a statement from the Engine Carpenter's supervisor who outlined what the Engine Carpenter did during the 11:00 PM to 7:00 AM shift on the claim date, clearly stating that the Engine Carpenter worked two hours doing work he perceived as Carman Painter's work and six hours doing other work.

The Organization, upon receipt of the supervisor's statement, took the position that the statement clearly shows that the Engine Carpenter spent more than two hours doing Carman Painter's work, but did not lay claim to any of the other work the Engine Carpenter did that just might be perceived as Carman Painter's work.

When a single craft seeks to adjudicate a claim that the Carrier violated the Agreement by assigning work from one classification to another classification, both within the scope of the same Agreement, the burden of proof, which is always on the shoulders of the petitioning party, is ever so more necessary than usual.

In this dispute, the parties have a Classification of Work Rule, period. If they have a break down of classification that would support the plea of a rules violation when a member of one classification does work of another classification, it is not evident in the material before the Board.

Furthermore, when confronted with conflicting statements such as here, the Board finds it impossible to determine which is valid and which is not. The safest course is to dismiss both statements on the basis of an irreconcilable dispute in facts. When this is done, we have a dispute wherein the petitioner claims work of one classification was improperly assigned to another classification within the scope of the same Agreement, and the Carrier saying only two hours of one classification was performed by another, an act permissible under the "simple task" clause of the revised Incidental Work Rule.

What occurred in this instance was not a violation of the Agreement. The claim fails for lack of proof.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

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

Dated at Chicago, Illinois, this 16th day of June 1999.