

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13440
Docket No. 13226-T
99-2-96-2-138**

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) 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 painters, R.E. Spears, ID #612513, H. Wiley ID #612334, W.R. Thompson ID #628414, and D.M. Borders, ID #627751 (hereinafter referred to as “claimant’s”) six hours each at the applicable carman painter 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 Electrical Workers was advised of the pendency of this dispute, and filed a Submission with the Board which has been considered. It contends that specified work covered by its Classification of Work Rule must be protected.

The claim protests Carrier's October 29, 1995 assignment of four Electricians to sand, mask and paint the Fireman's side of CSXT 6422 at the Huntington Locomotive Shop. The dispute involves Carrier's use of the Incidental Work Rule to assign work that has admittedly been historically performed by Carmen Painters to employees outside the craft.

The Organization argues that such painting work is reserved to its craft under the language of Rule 154 (a) and is not contained in the IBEW Classification of Work Rule. It contends that Carrier may not rely upon the Incidental Work Rule in this case because the work in issue far exceeded the two hour time limit for the assignment of a simple task. The Organization relies upon a signed statement from the four Electricians specifying that the assignment on October 29, 1995 included preparing and painting the Fireman's side of the unit in question, and that such work began at 3:30 P.M. and continued through 9:30 P.M.

Carrier contends that this job assignment was permissible under the Incidental Work Rule because it involved a simple task that took less than two hours to perform. It relies upon a questionnaire filled out by Supervisor J. Slash indicating that the unit had fire damage on the Fireman's side, which required sanding off smoke damage and touching up the paint, and that such work took less than two hours to perform.

A review of the record reveals that the claim encompasses the application of the cab floor as well as work performed on the door and ceiling panels. There is no dispute that this work has historically been performed by Carmen. Carrier's evidence as to the length of time it took to perform the disputed job assignment relates only to the door and ceiling panel aspects, and does not encompass the application of the cab floor. Because the Electricians involved specified that they worked on the disputed assignment for

approximately six hours on October 29, 1995, Carrier's reliance on the Incidental Work Rule is misplaced. That Rule sets an outside time limit of two hours for the performance of a simple task. Because this assignment exceeded that time limit, it is not protected by the Incidental Work Rule, and violates Rule 154 (a) and (b) of the Agreement.

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 Claimants be compensated for the six hours lost work opportunity on October 29, 1995 at their pro rata rate of pay.

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 25th day of August 1999.