

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13646

Docket No. 13539

01-2-00-2-14

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Carrier violated the terms of our current agreement, in particular Rule 2 when they arbitrarily allowed an outside concern to perform work that is contractually and generally recognized as carman’s work on November 23, 1998.
2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Fred Curtis and Jeremy Basford in the amount of eight (8) hours pay at the overtime 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 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.

The Claimants are Carmen/Painters with regular bid positions, assigned from 7:00 A.M. to 3:00 P.M. at the Waterville, Maine, Paint Shop. There is no dispute that applying decals to locomotives and freight cars is a normal element of their assignment.

On November 23, 1998, two employees from an outside firm, Signs by Design, were utilized by the Carrier to apply decals on freight car MEC 29169. According to the Organization, the two Signs by Design employees worked from 8:30 A.M. until 4:30 P.M. The Organization argues that the Claimants were improperly denied the opportunity to perform this work.

The Carrier defends its action on various bases, as follows:

These decals were of a specialized nature and that there were no Painters qualified to apply these decals. Additionally these decals were purchased with installation included in the price. The Carrier has purchased decals and had them installed by this manufacturer on previous occasions. Due to the time involved in creating these decals and the impending opening day celebration, a misapplication of these decals would have been detrimental to the Carrier. Finally, neither Claimant lost any time as a result of this dispute.

The Carrier's arguments are not convincing. The fact that the installation was "included in the price" does not sanction the assignment of work to outside forces. The only support for previous practice was the Carrier's statement that a similar "special" installation was performed a year earlier "with the assistance and supervision of the Signs & Designs technicians." This is clearly distinguishable from having the work itself performed by other than Painters.

The Organization notes previous training given to Carmen/Painters in the application of decals. The contention that a "misapplication" might have occurred is purely speculative. The Carrier also fails to distinguish between "lost time" from the Claimants' regularly assigned hours and the irrecoverable lost work opportunity, as occurred here.

The Board determines that the claim has merit, but the remedy sought by the Organization is excessive. Had the Claimants been assigned the work, there is little

probability that the assignment would have been performed on an overtime basis. The Award will provide for payment of eight straight-time hours in each Claimant.

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 17th day of September, 2001.