

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13769

Docket No. 13593

03-2-00-2-73

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn 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. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 2 when they arbitrarily assigned a Blacksmith to perform work that is historically and contractually recognized as Carman’s work.
2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman William M. Dostie in the amount of one (1) hours pay at the overtime rate. This is the amount he would have earned had the Carrier properly assigned this work.”

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 dispute in this case concerns a September 30, 1999 assignment of Blacksmith D. Tuttle from 1030 to 1130 at the Waterville Paint Shop to assist Carman/Painters F. Curtis and M. Lawrence mask and paper a freight car in preparation for painting. The Carrier defends the assignment on ground that the work performed by Blacksmith Tuttle was incidental to his Blacksmith's work.

Rule 2.1(k) of the Carmen's Agreement states that Carmen will "[p]aint cars, locomotives and components including stenciling." By the clear terms of Rule 2.1(k), masking and papering a freight car in preparation for painting is therefore Carmen's work.

The Carrier does not dispute that masking and papering in preparation for painting is Carmen's work. In its April 14, 2000 letter, the Carrier states "[w]e agree that this work is normally performed by Painters." The Carrier, however, asserts that such work can also be performed by a Blacksmith under the Blacksmiths' Incidental Work Rule. The Blacksmith's Incidental Work Rule provides that "[i]n addition to the services specified in Rule 2 of this Agreement, Employees will also perform any and all other services incidental to a clean, safe, and operational facility."

In a series of similar disputes decided by the Board where the Carrier has attempted to justify an assignment of Carmen's work to another craft by relying upon the other craft's incidental work rule, we have required that the Carrier at least make some showing that the disputed work was incidental to the other craft's work. See Second Division Awards 13731 and 13767 (sustaining claims where Machinists were assigned to Carmen's work of blowing grit from locomotives); 13768 (sustaining a claim where a Machinist was assigned to make and cut stencils). See also Second Division Award 13570 (also involving the assignment of stenciling work to a Machinist). Where the record failed to demonstrate that the disputed work was historically or by rule Carmen's work or where the Carrier showed that the work was incidental to another craft's work, we have denied claims finding that the Carrier could make the assignments to other crafts on the basis of the other crafts' incidental work rules. See Second Division Awards 13708 (assignment of a Machinist and a Sheet Metal Worker to remove and replace a broken window and casing on a car) and 13730 (assignment of Machinists to remove masking tape and

paper used in the painting process as incidental to switching performed by the Machinists along with the failure of the Organization to how much work was actually performed by the Machinists).

The disputed work in this case is masking and papering a freight car in preparation for painting. Under Rule 2.1(k) (which states that Carmen “[p]aint cars, locomotives and components including stenciling”) and by admission of the Carrier (“[w]e agree that this work is normally performed by Painters”), the work in dispute in this matter is clearly Carmen’s work. Therefore, because it argues that it could make the assignment to a Blacksmith on the basis of the Blacksmith’s incidental work rule, the Carrier must show that the work was incidental to Blacksmith Tuttle’s work. The Carrier has not done so. Indeed, the Carrier only states in its December 17, 1999 letter that it “. . . simply used a straight time employee under the current Incidental Work Rule to complete a task.” The Carrier has not shown how the specific work in dispute was incidental to Blacksmith Tuttle’s work.

The clam will be sustained, but only at the straight time rate.

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 24th day of October 2003.