

Award No. 3370

Docket No. MW-3072

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the Agreement in effect between itself and the Brotherhood of Maintenance of Way Employees by assigning work of painting the interior of tool rooms and check rooms in the machine and boiler shops at Paducah, Kentucky, to employees in the mechanical Department during the month of February 1942:

(2) That Bridge and Building Painters C. B. Prince and Roy Yates, laid off in force reduction while this paint work was being performed by employees of another department, be paid at B&B painter's rate, 8 hours per day, on days tabulated as follows:

Prince—February 2, 3, 4, 5, 6, 7, 9, 16 and 18.

Total: 9 days, 72 hours.

Yates—February 6, 7, 9, 10, 11, 12, 13, 14, 17, and 18.

Total: 10 days, 80 hours.

EMPLOYES' STATEMENT OF FACTS: During the period from February 2nd to 18th, 1942, the Carrier assigned employees of the Mechanical Department to the painting of interior of tool rooms and check rooms in the machine and boiler shops at Paducah, Kentucky.

While the Mechanical Department employees were performing this work of painting, the claimants, C. B. Prince and Roy Yates, regular B&B painters, were out of work by reason of force reduction.

The Agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The Scope of the Agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employees reads:

"SCOPE

This schedule governs hours of service and working conditions of all employees in the Maintenance of Way and Structures Department, except:

- (a) Signal Department employees.
- (b) Clerical forces.
- (c) Engineering forces.
- (d) Scale Department employees.

2. There is no rule in the presently effective agreement between the parties which grants the painting of shop equipment of this character to the Brotherhood of Maintenance of Way Employees.
3. There is no subsequent agreement which sets aside the mutually acquiesced in interpretation which grants this painting of shop equipment to shopmen.
4. The claim must, by virtue of the foregoing, fall of its own weight.

OPINION OF BOARD: In February, 1942, the interior of the tool rooms and check rooms in the Machine and Boiler Shop of the Carrier at Paducah, Kentucky, was painted by employes covered by the Shop Crafts Agreement. The Carrier describes the Machine and Boiler Shop as being 681' x 245' in size, with bay from 38' to 58' in height. In the approximate center of this building there is an enclosure 80' x 17', 10' in height, made up of counter, racks and bins supported by steel posts (fastened to wood block flooring) to which wire mesh is attached. This enclosure was installed after the building itself had been completed and is not attached to walls, ceiling or roof supports of the machine shop building. From this description that part of the building in dispute is not movable and it is, therefore, a permanent part of the machine shop building.

The employes rely upon the Scope Rule and a memorandum agreement dated February 11, 1938. The Scope Rule reads:

"This schedule governs hours of service and working conditions of all employes in the Maintenance of Way and Structures Department except:" (followed by twelve exceptions).

Painters are not listed in the exceptions mentioned in the rule and are covered by the Scope provisions just quoted. See Award No. 2812.

The Memorandum agreement of February 11, 1938, reads:

"ILLINOIS CENTRAL SYSTEM

C. R. Young	177-9-19
Manager of Personnel	
135 East 11th Place	
Chicago, Ill. February 11, 1938.	

Mr. F. L. Noakes, General Chairman,
Brotherhood of Maintenance of Way Employees,
8223 Jeffery Avenue, Chicago, Illinois

Dear Sir:

At conference on December 30 we agreed upon a basis to dispose of your request that painters employed in the maintenance of way department be assigned to paint and whitewash roundhouse and shop buildings. At that time it was your suggestion that this disposal be held pending a disposal of the claim that maintenance of way painters be assigned to the painting of signal equipment. I am writing you a separate letter regarding the signal equipment claim, and, inasmuch as a new angle has developed in this claim which, in all probability, will dispose of it, I am proposing to dispose of the shop and roundhouse painting claim in the following manner:

1. Maintenance of way painters shall apply all paint, either oil or color, to shop and roundhouse structures, interior and exterior, with the understanding that whitewashing will not be considered painting, and the work of applying whitewash may be performed by any class of labor.
2. The pending claim, i.e., Asylum Machine Shop and Memphis Roundhouse, shall be separated as between painting and

whitewashing. The claims for painting shall be allowed, if they can be verified, and the claims for whitewashing shall be withdrawn.

I have enclosed a copy of this letter for your acceptance. Upon receipt of your acceptance and revision of claims, I shall have the necessary instructions issued to allow the employees concerned an adjustment equal to the amount of time that was consumed painting shop and roundhouse buildings at Asylum and Memphis by other than maintenance of way painters.

Yours truly,

(signed) C. R. Young

Accepted for the Brotherhood of
Maintenance of Way Employees:
(signed) Frank L. Noakes
General Chairman"

This Board is of the opinion that the above-quoted letter of the Carrier and its acceptance by the Organization is an agreement not only as to the claims in dispute, but also an agreement as to future work. It definitely gives the work in dispute to employees covered by the Maintenance of Way Agreement.

Since the opening of these shops, the Carrier cites six instances when these enclosures have been painted by employees represented by the Shop Crafts employees, and for this reason contends this claim should be denied. This Board has repeatedly held that past practice cannot supercede the plain provisions of a contract between the parties.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement as contended by the Petitioner.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1947.