

Award No. 5345
Docket No. MW-5136

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

(1) That the Carrier violated the agreement when it assigned two (2) trackmen to clean ceiling and walls in the Roadmaster's office at Schenectady, New York on Sunday, January 4, 1948;

(2) That the two (2) senior painters working on the Susquehanna Division be allowed two hours and thirty minutes pay at their overtime rate because of this improper assignment.

EMPLOYEES' STATEMENT OF FACTS: Because of a fire which occurred in the Roadmaster's office at Schenectady, New York on December 20, 1947, it was necessary that this office be cleaned and painted.

On Sunday, January 4, 1948 the Carrier assigned two (2) trackmen to clean the ceiling and walls of the office in preparation for painting.

The two trackmen assigned to the cleaning of this office in preparation for painting were so engaged for a total of approximately 5 hours.

The claimants, who hold seniority as painters, were available and ready to perform the work had they been called.

Claim was filed in behalf of the two (2) senior painters and claim was declined.

The agreement between the two parties to this dispute, dated November 15, 1943, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: Rule 1(b) of the effective agreement reads as follows:

"An employe will hold and accumulate seniority in his own class and in all lower ranks of his class."

Rule 2 of the agreement reads as follows:

"Rights of employes to positions shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail."

In this instant case, the claimants held seniority as painters and were available and qualified, had they been called. The trackmen assigned to perform the work held no seniority as painters. The Employees, therefore, maintain that the Carrier violated the terms of the agreement, and we further maintain that the claim here presented is just and reasonable, and we respectfully request that it be allowed.

CARRIER'S STATEMENT OF FACTS: On December 20, 1947 a fire occurred in the office of the Roadmaster at Schenectady, New York, making same unsuitable for use until cleaned and debris removed; therefore, on Sunday, January 4, 1948, trackmen were assigned to clean the dirt from floor, ceiling, walls and furniture.

The Roadmaster and his office force were able to use the office on January 5, 1948 and continued to use the office while the carpenters and painters were doing their work. The carpenters completed their work on January 19, 1948 and the painters started January 9th and finished January 28, 1948.

POSITION OF CARRIER: On Sunday, January 4, 1948, it was necessary to call out several trackmen to clean and open switches after a severe snow storm, and the Roadmaster assigned three trackmen from his group to clean his office from the effects of the fire. These trackmen used a broom and a cleaning brush to brush off soot and charred paint and varnish from the interior of this office, after which they washed the furniture and desks and swept and mopped the floor.

All the service performed was of the type considered as laborer's work and had no relation to the duties of the painters or any other craft of mechanics.

It was necessary for the carpenters to do considerable work in this office before the painters performed any service. One of the duties of the carpenters was to cover the ceiling with new plaster board. When the painters were brought in they worked 650 hours in cleaning, scraping and sandpapering before they applied any paint. The painting required 370 hours of their time.

As stated, the work performed by the trackmen was merely to clean the office in order to make it suitable for use of the Roadmaster and his clerical force and in no way infringed upon the painters' duties. As proof of the duties performed by the trackmen so assigned on this date, there are attached photostatic copies of notarized statements of Trackmen George H. DuRoss, Jr. (Exhibit "A"), Walter G. Weis (Exhibit "B") and Anthony Barbarulo (Exhibit "C") indicating the service they performed and the time consumed.

Carrier requests that claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: A fire occurred in the office of the Roadmaster at Schenectady on December 20, 1947. On Sunday, January 4, 1948, three trackmen who were in a group that had been called out for the purpose of cleaning and opening switches after a severe snow storm were assigned by the Roadmaster to clean his office. In the cleaning process two of the trackmen, using a broom and a cleaning brush, swept and brushed off soot and charred paint and varnish from the walls and ceiling of the interior of the office. Two of the trackmen spent approximately five hours in that part of the cleaning operation. The Employees claim that the work of cleaning the walls and ceiling was painter's work and file claim as indicated.

The issue in this docket is very simple. It is whether or not by the assignment of these trackmen to the cleaning of the walls and ceilings, the

Carrier caused an encroachment upon work reserved to the classification of painters under the Agreement. The rate paid the trackmen is not at issue.

The burden of establishing that the work involved is reserved to the classification of painters is, of course, upon the parties asserting the claim. The facts of record indicate that the Employees have failed to sustain this burden. The tools used to accomplish the work were brooms and cleaning brushes, tools more commonly associated with the work of janitors or charwomen than painters. The purpose of the work was to make the office usable by the Roadmaster during the period that the carpenters and painters were working therein. The painters spent many hours in the preparation of the walls commencing about 5 days after these cleaning operations took place. It seems clear that such work as was done on the walls and ceiling by the claimants was merely part of the operation of cleaning (so characterized by the Employees' own exhibits) the Roadmaster's office. It follows that there is no basis for an affirmative Award.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 24th day of April, 1951.