

Award No. 6154

Docket No. MW-6260

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE BALTIMORE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when it required or permitted trackmen to paint speed limit signs and crossing signs on the Toledo Division;

(2) That Carpenter Ralph Ellerbrock be allowed two days (16 hours) pay at his straight time rate because of the violation referred to in part (1) of this claim.

JOINT STATEMENT OF FACTS: Prior to the year 1943 speed limits were indicated at many points on this railroad by triangular metal signs on which the numerals indicating the speed limits were stenciled. When it became necessary to repaint these signs, it was the general practice for traveling Bridge and Building Department men to go over a territory and repaint these signs on the ground.

In 1943 a triangular sign was substituted on which the speed limit was indicated by cut-out numbers and this is the present standard. Since 1943 the painting of these speed limit signs has been performed, with some few exceptions, by track forces rather than Bridge and Building Department forces. No complaint was made as a result of this change until about 1948 or 1949. The matter was not actively prosecuted until August 9, 1950, on which date the General Chairman of the Brotherhood of Maintenance of Way Employees advised the Manager Labor Relations that he was in receipt of protest from Bridge and Building Department forces on the Toledo Division due to track forces performing this work. On May 7, 1951, he presented the instant claim on the basis that 45 or 50 of these signs had been painted by track forces.

This dispute has been handled in accordance with the provisions of the Railway Labor Act, as Amended. No agreement on a settlement thereof having been reached between the parties, it is hereby submitted to the National Railroad Adjustment Board for decision.

We think, however, that the signs did not come within the scope of the rule until they were delivered to Roadmasters by the Mechanical and Stores Department."

Insofar as the second point in this case was concerned, that is, the use of section forces to place the signs on the ground, it was held in part as follows:

"To sustain the claim would serve only to confuse the line of demarcation between work of different crafts. Allowance of it would mean that the mechanical department would have to deliver them unpainted. We do not think that, by any fair inference, the agreement can be so construed as to bring about that result."

The record shows that the wage claim in this particular dispute was denied in its entirety.

In view of the above cited awards of this Division it follows logically that a definite principle has been set forth envisaging that in the absence of a supporting working rule this Division lacks proper authority to arbitrarily draw a concrete line of demarcation between work performed by one class of employees within the scope of one working agreement and another class of employees within the comprehension of that same working agreement. That is to say the Division is without authority to set forth a definite proposition designing duties where there is no rule specifically classifying such duties or where there is a substantial blending and merging of these particular duties.

In view of the basic facts in this case and in view of the above the Carrier submits that the awards of this Division do not support this claim.

In view of the above and in view of all that is contained herein the Carrier respectfully requests this Division to hold this claim as being one without merit and to deny it accordingly.

OPINION OF BOARD: This claim is based on assignment of track forces to paint speed limit signs which work it is asserted belongs to the Bridge and Building Department forces.

Prior to 1943 the joint submission states that practice was for B&B men to repaint the speed limit signs. Then signs with cut-out numbers were substituted for those with stencil numbers and the repainting of them was assigned to track forces without protest until 1950.

Carrier attempts to justify such change (1) because the painting of the cut-out sign requires still less skill than painting the stencils, and (2) because it says that such a sign is an "appliance" as used in the rule provision that "painting of switch stands or other appliances" will be considered trackmen's work.

As to the first ground, the application of the agreement is generally to the character of work, not merely to the method of performing it. The character of the sign painting was the same before as after the change from stencil to cut-out figures, and admittedly it was then considered B&B Department work.

As to the second ground, if such sign was an "appliance" after the change it was an "appliance" before and admittedly it was not so considered then.

Therefore we must hold that the interpretation of the rules on the property prior to the changed method of making numbers must control us now.

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 Agreement was violated in the assignment of work as here shown.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1953.