

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 effective agreement when they required or permitted Mechanical Department employees to paint oxygen and acetylene pipe lines at the Johnston Car Shops, Memphis, Tennessee;

(2) That Bridge and Building Painters William G. Gafford, Rufus A. Martin and L. B. Riales be paid in addition to wages paid, forty (40) hours each at their respective straight time rate of pay because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Prior to November 1, 1950, the Carrier leased an oxygen and acetylene storage and distribution facility from the Oxweld Railroad Service Company, and subsequently purchased and assumed ownership of it on November 1, 1950.

The Carrier assigned Mechanical Department employees to paint the pipe lines of the above-mentioned facility on December 13, 1950. The work was completed on December 22, 1950 and 120 man-hours were consumed in the performance of the work, two Mechanical Department employees performing 56 hours service each and one Mechanical Department employee performing 8 hours service.

The facility is attached to and made an integral part of the structure in which it is housed.

Claim was filed in behalf of the three senior Painters, Carrier declining claim.

The agreement in effect between the two parties to this dispute dated September 1, 1934, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The facility involved in the instant dispute is essentially several storage and supply tanks which respectively contain oxygen and acetylene which is distributed to the ultimate point of use

OPINION OF BOARD: This claim concerns the request that named claimants be granted forty (40) hours pay, pro rata, account of alleged violation of the effective agreement when Respondent assigned employees not covered by this agreement the task of painting pipe lines of the oxygen and acetylene distribution system in the Mechanical Department.

The Organization asserts that these lines together with attached valves, etc. are a part of the structure in which they are housed, and as such become subject to the Scope Rule of the confronting agreement, which places all painting of structures thereunder and makes such work assignable to Maintenance of Way employees. It was further pointed out that an agreement had been entered into concerning painting with another (Carmen) Organization, said agreement relegating such work to Maintenance of Way forces. The further position was taken that prior settlements on the property sustain the Organization's position.

The Respondent took the position that the oxygen and acetylene distribution system is separate and independent of the structure in which it is housed, being a portion of the tools or equipment of the Carmen, the maintenance of which represents duties of such craft. It was further asserted that neither the agreement with the Carmen or the settlement relied upon by the petitioners were intended to cover work of the type and under conditions here present.

The pipe lines in question, as a part of the oxygen and acetylene distribution system, came into the possession of or under the exclusive control of the Carrier in 1950. The initial agreement with the Maintenance of Way employees was negotiated in 1934 and last amended in 1950. Since the equipment (or facility) was not in existence at the time the initial agreement was executed it cannot be said that this specific work came within the thinking or agreement of the parties. The painting of structures clearly by custom and tradition is the type of work inuring to Maintenance of Way forces. If the lines in question can be said to be a part of the structure the painting of them is properly within the Scope of the agreement. If they are not, past custom and practice, if any, and the purpose for which the lines are used, are pertinent.

Since the ownership and probable maintenance of the pipelines and attachments did not vest in or rest with the Carrier prior to the confronting complaint we are of the opinion that past practice is immaterial.

It appears to us however that the pipe lines, valves, gauges, etc. are a part of the oxygen and acetylene distribution system, and as such are a part of the equipment of Carmen rather than a basic and integral part of the structure housing same. The purpose of the lines are to make operative the welding equipment used by Carmen whose duties ordinarily include the maintenance of their equipment. We do not think this painting is of the nature reserved exclusively to Maintenance of Way Painters.

It is likewise noted that the settlement relied upon by the Organization occurred in 1938 and concerned the painting of a roundhouse which is obviously a structure, which is in no way analogous to the pipe lines, etc., involved here. The agreement between the Carmen and the Maintenance of Way Organization is not applicable here for two reasons (1) the Coverage of the subject matter is not analogous and (2) the said agreement was entered into after the date on which these claims arose.

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 did not violate the effective agreement.

AWARD

Claims 1 and 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November, 1957.