Award No. 10296
Docket No. MW-9555

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

George D. Bonebrake, 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 that:

(1) The Carrier violated the effective Agreement between August 15 and 26, 1955, when it assigned or otherwise permitted Bridge and Building Carpenters to paint the roof of the freight station at Owensboro, Kentucky;

(2) Kentucky Division Painters E. L. Miller, H. H. Story, P. L. Walker, E. K. Franklin, G. E. Hopkins, G. E. Gurgett and J. E. Whittington each be allowed twelve hours' pay at their respective straight time rate account of the violation referred to in part one (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Between August 15 and 26, 1955, the Carrier assigned and/or permitted Bridge and Building Carpenters to paint the roof of the Carrier's Freight Station at Owensboro, Kentucky. B&B Carpenters consumed twelve (12) hours in the performance of this work.

The Carrier's Kentucky Division Painters have performed similar work in the past, and were available, qualified and willing to have performed this work, had the Carrier so instructed.

Claim as set forth herein was filed, and the Carrier has denied the claim throughout all stages of handling.

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

POSITION OF EMPLOYES: Rule 1 provides:

"SENIORITY

Rule 1. Seniority begins at the time the employes' pay starts."

Rule 2 confines the seniority rights of the various classes of employes to the sub-department in which employed and specifies the different sub-departments encompassed within the Agreement. Rule 2 reads:

tice on the Kentucky Division, where this dispute arose, and on the railroad, has been that B&B forces have applied roof preservatives such as Barrett's Liquid Elastigum and similar products. The Organization's General Chairman alleged in conference on January 10, 1957, that he knew of a number of occasions where painters had performed this work. He was urged to present any evidence of such instances that he had, but he has not done so. In the event the Organization does present evidence of this type to the Board after refusing it to the Carrier, the fact still remains that in the vast majority of cases B&B forces have done this work rather than painters.

The Organization, itself, is on record before this Board to the effect that the work of B&B carpenters and painters overlaps on the Illinois Central Railroad. The Board is invited to review the ORAL ARGUMENT ON BEHALF OF EMPLOYES in Docket MW-6522, where the Organization said, (page 8):

> "Furthermore, Bridge and Building employes on this property and within the railroad industry in general are generally employes of a composite skill as referred to in Awards 5277, 5471, and 5485, in that carpenters, painters, bricklayers, etc., are usually skilled in the work of each other's class. **In fact, they have been consistently so considered and assigned on this property.**" (Emphasis added.)

In the same docket, MW-6522, the Board is referred to the Employes' Reply dated May 7, 1953, and the following statement which appears on page 2 of the reply:

> "Furthermore, the Carrier is well aware that its **B&B forces are regularly engaged in** cement work, plastering and lathing work and **roofing work** and that it recognizes such crafts to be a composite of the various crafts found in the Building trades." (Emphasis ours.)

It is obvious that the work performed on the claim date was "roofing work." No matter how strenuously the Employes may now argue that the work here involved was "painting," the fact is clear that it was likewise "roofing work" which by the Employes' own admission is regularly performed by B&B employes.

There is no basis for this claim. The applying of waterproofing roof cement is not by its nature painters' work. In this case it was clearly incidental to the repair work properly performed by B&B employes. Neither by agreement rules nor by custom, practice, and tradition has such work been reserved to painters. The agreement has not been violated and the claim should be denied.

It is noted that the Claimants claim time far in excess of what was actually spent performing the disputed work.

All data in this submission have been presented in substance to the Employes and made a part of the question in dispute.

OPINION OF BOARD: The issue presented is whether or not the Carrier violated the applicable Agreement in permitting, between the dates stated, the work of applying roof preservative at its Owensboro, Kentucky, freight station to be performed by B&B Carpenters instead of by painters. The latter claim that they are entitled to perform the work and are the named Claimants herein. They ask to be compensated for the work which they say they had a right to perform.

The Brotherhood points out that separate seniority is provided in the applicable Agreement for painters and carpenters, and says that a recognized craft line existed between the two classes of employes involved in this dispute. It is argued that the roof preservative — which was applied by swabs after the carpentry repairs had been made and the roofing paper applied — was similar to and for the same purpose of ordinary paint; that the work of applying it should not have been performed by the carpenters, but rather by the painters. It is argued that the application involved approximately 2,000 square feet, which is more than "patch work" of one square (100 square feet) as specified in Rule 48, which provides as follows:

"PATCHING PAINTING

"Rule 48. When house carpenters or bridge carpenters do small jobs of patch work on buildings or structures that will not require to exceed one square of painting, the carpenters will be allowed to do such painting."

The Carrier contends that under the Agreement the painters do not have the exclusive right to perform the work in question; that the work was incidental to the repair work performed; that the fact that painters had been permitted to perform similar work in the past on the Kentucky Division — the one involved here and one of the thirteen divisions of Carrier's system — does not entitle them to do the work exclusively.

Past awards by the Board are cited by both parties in support of their respective contentions. They have been examined, as well as the submissions by the parties. It would serve no good purpose to comment on them in detail, as the dispute here involved must stand or fall upon the facts presented, not, in the absence of binding precedent, as to what was said or occurred under other circumstances. This is not to say that previous decisions are or may not be pertinent or persuasive. They are appreciated and helpful in the determination of any case. If prior awards are shown to be controlling they will be given proper effect, but the facts in each case are of, and must be given, primary importance. Here, after deliberation, the facts are not considered sufficient to support the claim. The following are cited in support of our conclusion:

1. The application of roof preservative, although similar in many respects to "painting" — e.g. in content of the material, purpose etc. — was incidental to or an integral part of the work performed by the B&B Carpenters. "Painting," as normally understood, was not here a separate function, and the application of the preservative was part and parcel of the repair work which was performed.

2. Such work as performed in this case was not "patch painting" within the meaning and contemplation of Rule 48.

3. Past practice of such a nature so as to assume the importance or have the effect of a contractual requirement, was not shown.

In view of our decision as above set forth, it is not necessary to rule or pass upon other matters involved, and no inference one way or the other is intended.

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 Employes involved in this dispute are respectively Carrier and Employes 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January, 1962.