

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the Agreement on May 11 and 12, 1955 when it assigned or otherwise permitted other than B&B painters to paint the floor and toilets in the Aurora Depot Power Plant.

(2) Painter Foreman R. A. Renner; Painters W. J. Robertson, J. D. Miller, P. Jones, W. C. Harbicht and Painter Helpers R. Crafton, and Leroy Anderson each be allowed two hours' pay at their respective straight-time rates account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On May 11, and 12, 1955, the Carrier assigned a Carman, who holds no seniority rights under the effective Maintenance of Way Agreement, to the work of painting the floor and toilets in the Aurora Depot Power Plant. This floor space is 14 ft. square and each of the two toilets are 4 ft. square.

On May 11 and 12, 1955, the employees of the Carrier's Eastern District Paint Gang No. 2, were working in Aurora Terminal, Aurora, Illinois and were willing to have performed the work here in dispute, had they been so instructed.

Claim as set forth herein was filed and the Carrier has declined the claim.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments, and interpretations thereto are by reference made a part of this Statement of Facts.

First: The Carrier does not desire to further burden the record in a case which should never have been submitted to the Board, because an honest, reasonable, and equitable settlement can be made on the property; and

Second: The Carrier believes that no tribunal of any kind could, with good conscience, render a decision other than complete denial of the claim as presented.

The Carrier affirmatively asserts that all data herein and herewith submitted has previously been submitted to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: One of the basic disagreements in this dispute concerns the actual time required to perform the work. The Organization claims it must have taken at least two (2) hours to do the work and the Carrier contends that it actually took one (1) hour and fifteen (15) minutes, and buttresses this contention with a signed statement from the worker who did the work stating that it took him 1 hour and 15 minutes to complete the task. We believe the evidence supports the Carrier's contention that the task was completed in 1 hour and 15 minutes. We reject the Organizations arguments as to the amount of time required because they are based on conjecture and conjecture is not proof.

The Carrier has repeatedly admitted liability for 1 hour and 15 minutes, because of the breach of the Agreement, but the Organization contends that it must have taken 2 hours to do the work, so seven members of the B&B Gang should each receive two hours pay for a total of 14 hours pay. Since we have found that the actual work required 1 hour and 15 minutes we must necessarily deny this part of the claim. It is our opinion that where the Scope Rule has been violated, as we find it has in this dispute, then the penalty imposed must be to the extent of the work lost. We find that the Carrier should pay to the senior Claimant, at his then rate of pay, a sum equal to one hour and 15 minutes at straight time.

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.

AWARD

Claim sustained in accordance with above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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