

Award No. 10369
Docket No. MW-9466

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

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

(1) That the Carrier violated the Current Agreement when it assigned section forces who hold no seniority in the B&B department to the work of placing overlay signs on the following dates, December 2nd, 1955, December 19th, 1955, December 20th, 1955, December 27th, 1955, January 11th, 1956, January 16th, 1956 and January 17th, 1956 or a total of 69 hours.

(2) That A. L. Grigsby B&B foreman, W. W. Papke B&B foreman, C. E. Stockton, B. R. Veltrie, B&B carpenters, Howard W. Godwin and Amado Sandoval B&B helpers each be paid their proportionate "share of the above mentioned hours at their respective pro-rata rates of pay account of this violation."

EMPLOYEES' STATEMENT OF FACTS: The work of constructing, painting and lettering roadway signs and the work of repainting and re-lettering roadway signs in the field has been recognized as the exclusive work of B & B forces on this property.

Beginning in 1955, the Carrier decided to eliminate the relettering of signs in the field by substituting therefor the placement of so-called "over-lay signs" over the banners of existing signs. These overlay signs were then constructed in the B & B Shop at Pueblo.

These overlay signs were constructed of light metal and fabricated in the same form and shape of the particular sign on which they were to be placed, and then lettered with the same lettering as the sign upon which they were to be placed.

OPINION OF BOARD: This claim concerns the placing of overlay signs by track forces.

Carrier in its initial submission on March 8, 1957 stated:

“The work of installing roadway signs, and in the past few years overlay signs, on Carrier’s property has never been since the railroad has been in existence, the exclusive work of any specific group of employees.” (Emphasis ours.)

The Organization states that “beginning in 1955, the Carrier decided to eliminate the relettering of signs in the field by substituting thereafter the placement of so-called ‘over-lay signs’ over the banners of existing signs.”

Petitioner contends that the instances here in question and here in dispute covering specific dates in December, 1955 and January, 1956 are the first instances in which the Carrier substituted the repainting of signs by the use of over-lay signs.

Carrier contends without contradiction that it was the practice for sectionmen as well as B&B forces to erect and install signs on the Carrier’s property.

Organization contends that B&B forces repainted and/or relettered exclusively all roadway signs in the field.

Carrier at no time denied Organization’s claim that B&B forces repainted and/or relettered all roadway signs in the field. Instead it relies on the fact that no craft had the exclusive right to install signs and that all renewal work was not performed by the B&B forces. It offered in evidence two instances where section forces were used to perform the following:

“Section 6303 Yale — 32 hrs 6-26-53 Renewing old old crossing and installing crossing signs MP 249 to 250

Section 6311 Minturn 16 hours 12-4-53 Replacing MP signs MP 297 to 307”

It appears from the record that sign installation work (including certain sign renewal work) is not exclusive to any craft. On the other hand, it appears also from the record that the repainting and relettering of all roadway signs in the field was exclusive with the B&B forces. This being our analysis of the present case, we are disposed to follow the reasoning in Award No. 4637.

Words with different meanings have been used interchangeably throughout the record.

We believe that the placing of overlay signs in this case was a new method for the repainting and/or relettering of existing signs. To this extent, the Carrier’s change in the method of performing the work did not change the character of the work being performed. We are of the opinion that this work properly belongs to the Claimants.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1962.

DISSENT TO AWARD 10369, DOCKET MW-9466

Grievous error is obvious on the face of this award. After observing that sign installation work and sign renewal work "are not exclusive to any craft", the Majority proceed, without any rational basis, to hold that B&B Painters had an exclusive right to install "overlay" renewal signs on the dates listed in the claim.

The employees described the work involved as "restoring the visibility of roadway signs" and as "work of installing these overlay signs". The record clearly establishes that in the past Carrier has renewed roadway signs by either of two methods: (1) It has had B&B forces paint a new sign in the shop and thereafter allowed section forces to install the new sign in place of the old in the field; or (2) it has sent the B&B Painters into the field to paint the sign. The record does not indicate that Carrier has ever been restricted in any way as to choice of method. Its right to renew signs by having a replacement painted in a B&B shop then having MofW Employees mount, place, or install it over or on the staff of the old sign in the field has never before been questioned, even though that method of restoring the visibility of the signs was obviously in lieu of having the old signs repainted and relettered in the field.

The record could not be more clear on the point that all painting and all lettering on the "overlay" renewal signs that were installed by section forces on the dates of this claim was done by the B&B Employees in the B&B shop.

Flying in the face of these admitted facts, the Majority in the concluding paragraph of their Opinion state:

"We believe that the placing of overlay signs in this case was a new method for the repainting and/or relettering of existing signs.

To this extent, the Carrier's change in the method of performing the work did not change the character of the work being performed. We are of the opinion that this work properly belongs to the Claimants."

As the record clearly shows, what we are concerned with in this case is the installing of signs in the field — nothing more, nothing less.

Since there is no specific provision in the Agreement covering the work, and there admittedly has been a practice of renewing lettering on existing signs by having a new sign painted and lettered in the B&B shop and thereafter installed in the field by section forces, B&B Employees clearly have no exclusive right to go into the field and place or install renewal signs painted in the B&B shops, **Award 7031 (Carter)**.

The award is an obvious attempt on the part of the Majority, in contravention of the powers and responsibilities of this Board, to impose upon Carrier a new and costly restriction which is not provided for in the Agreement. As we said in **Award 9253 (Weston)**:

" . . . It is our function to interpret the Agreement as it now stands and not to rewrite it in accordance with our own theories of labor-management relations . . . "

The statement of the Majority that they "follow the reasoning in **Award No. 4637**" further demonstrates the error of their decision. There is a superficial similarity in the events that gave rise to the two claims, but **Award 4637** is expressly based on a finding that B&B Employees had an exclusive right to the work there involved; whereas the record before us establishes that B&B Employees have never had an exclusive right to the work here involved (installing renewal roadway signs) and the Majority are compelled to admit this. The question before the Board in **Award 4637**, as stated in the next to last paragraph of the Opinion, was:

"Does this Board have any more right to divide the instant operation between the employees (**B&B**) who did it exclusively under the old method and those of another group (track forces) covered by the same rule, than it has to continue it under the former accepted jurisdiction?" . . .

That question is obviously not involved in the case before us, for here it is admitted that the renewal of signs has not been done exclusively by B&B forces in the past, but has been done by section forces whenever Carrier has elected to have renewal signs made up in the shop and installed by section forces in the field. In addition, we should note that the Board's decision on the controlling question in **Award 4637** is diametrically opposed in principle, to the decision of the Majority in this case. That decision reads:

" . . . 'We think there is less danger of 'extending or expanding the agreement' if we leave the jurisdiction where it was. Reclassification by decree rather than by negotiation on the property has inherent dangers that this Board ought to be slow to encourage."

The obvious result of giving effect to the decision of the Majority in this case would be to deprive Carrier and section forces of a right which they admittedly had and exercised at all times prior to the dates of this claim,

namely, the right to have renewal signs made up in the B&B shop and installed in the field by section forces. The mere fact that a new type of renewal sign has been devised (the so-called "over-lay") furnishes no valid basis for denying Carrier the managerial prerogatives which it has always had in connection with renewal of roadway signs.

The award is clearly erroneous and should be treated as such.

G. L. Naylor

F. J. Goebel (Per REB)

O. B. Sayers

R. A. DeRossett

R. E. Black