

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

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

(1) The Carrier violated the effective Agreement when, on March 17, 1957, it assigned other than B&B painters to clean and paint the exhaust ducts over the wash tanks in the Carrier's Kirk Yard Roundhouse;

(2) B&B Painter Robert L. Coleman be allowed sixteen hours' straight time pay because of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On March 17, 1957, the work of cleaning and painting the exhaust ducts over the filter washing tanks in the roundhouse at Kirk Yard was assigned to and performed by a Shopcraft painter and helper, who hold no seniority rights under the provisions of this Agreement. Sixteen man-hours were consumed by the Shopcraft employees in the performance of the above-mentioned work.

The above-mentioned exhaust ducts were installed by the Carrier's Bridge and Building employees in 1956. Immediately prior to the fall inspection of 1957, the Carrier decided that the exhaust ducts required repainting and said repainting was then assigned to and performed by B&B forces.

The Agreement violation was protested and the instant claim filed in behalf of the Claimant. The claim was handled in the usual and customary manner and was declined at all stages of the appeals procedure.

The Agreement in effect between the two parties to this dispute dated August 1, 1952, together with supplements, amendments, and interpretations thereto, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 1, captioned Scope, reads as follows:

"The rules contained herein shall govern the hours of service, working conditions and rates of pay for all employees in any and all

their painters on November 13, 1957, was recognition on the part of the Carrier that such work did belong to B&B painters. Such a conclusion is premature and unsupportable. In November of 1957, Mechanical Department Supervisors decided that the duct work for the wash tanks was in need of repainting, but instead of ordering shop painters to do the work as they had previously, the request for painting the ducts was included erroneously in a requisition to the Maintenance of Way Department for other work which was to be performed in and around the Roundhouse at Kirk Yard. The inclusion of this painting work with other work performed by the Maintenance of Way Department was not the result of any requirement in the Brotherhood of Maintenance of Way agreement, however, and such assignment should not be considered as an acknowledgment on the part of the Carrier that this painting of the ducts has been contracted exclusively to B&B forces. This single instance of the assignment of such work to B&B forces was the result of an oversight on the part of the Carrier's Mechanical Department Supervisors, and cannot be considered as a precedent.

IV. CONCLUSION

The only question to be resolved in this case is whether the exhaust ducts for the filter wash tanks in the Kirk Yard Roundhouse are to be considered a part of shop machinery or a part of the building, and in the opinion of responsible Carrier officials in the Mechanical Department, it should be considered as a part of the shop machinery. This being so, the Maintenance of Way forces do not have a valid claim, since they have never performed work involving the painting of machinery. Such work always has been assigned exclusively to another craft, except for the instance on November 13, 1957.

In view of the foregoing, the Carrier asks that the claim be dismissed in its entirety.

The material included herein has been discussed with the Organization either by correspondence or in conference.

OPINION OF BOARD: Claimant, a Bridge and Building Department painter, seeks compensation when Carrier allowed shop department employes to clean and paint exhaust ducts over the wash tanks in the Carrier's Kirk Yard Roundhouse. The issue is clearly whether the ducts in question are a part of the building, hence their painting being work belonging to the Claimant pursuant to Rule 56 I, or machinery, as claimed by the Carrier.

We are bound by the record as to the facts. The ducts were within the building, and over the wash tanks. (See Letter 9/16/57, S. H. Shepley, Chief Engineer to D. L. Woods, General Chairman.) When originally installed, the duct work was fabricated by the sheet metal workers, but left unpainted. Many months later, car department painters painted the ducts to a height of ten to twelve feet above the floor, for which work, the instant claim is made. Some eight months later, the same ducts were repainted by the Bridge and Building department painters, who are Claimants here.

It is apparent that the ducts in question passed out of the building through the roof. (See page 2 of Carrier's statement in oral argument), and that on the roof a fan and a motor were installed. It thus is clear that the ducts in question were attached to the building and became a part of the building. It does not appear that the ducts were attached to any machinery; in fact, the Shepley letter above referred to indicates it was over the wash tanks. Being purely a part of the building, the work was that of the Claimants, and the claim will be sustained.

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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.