

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
INDIANA HARBOR BELT RAILROAD**

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

(1) The Carrier violated the effective Agreement when, on September 2, 3, 4, 8, 9, 10, 11, 14, 15, 16 and 17, 1959, it assigned B&B Foreman Blake instead of a Painter Foreman to supervise and keep time of two employes who were performing painter's work.

(2) Mr. John Gerk now be allowed the difference between what he was paid at the painter's rate of pay and what he should have received at the Painter Foreman's rate for the dates set forth in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Mr. John Gerk is the only employe in the Carrier's Bridge and Building department who holds seniority as a Painter Foreman, his seniority as such dating from December 14, 1948. On the other hand, six employes in the Bridge and Building department hold seniority as B&B Foreman, including Mr. D. R. Blake with seniority as such from October 20, 1945. Mr. Blake holds no seniority whatever as either a painter or painter foreman! Mr. John Gerk, in addition to his seniority as both a painter and painter foreman, also holds seniority as a carpenter, dating from October 12, 1925. Mr. Blake first entered the Carrier's service on September 1, 1924, while Mr. Gerk first entered service on October 12, 1925. (This fact is set forth in order to indicate that Mr. Blake, who is senior in service to Mr. Gerk, could have been the successful bidder for the position of Painter Foreman, but that he obviously placed no bid therefor when the position of Painter Foreman was bulletined and assigned to Claimant Gerk as the senior applicant. Both employes were working as carpenters until promoted to foreman).

Because the paint gang had previously been abolished, Claimant Gerk had exercised his carpenter's seniority, and was working as a carpenter. However, because the Carrier desired to wash and clean, in lieu of repainting, the walls and ceiling of Longfield shanty at Blue Island yard, Claimant Painter Foreman and Painter V. Enisele were assigned to perform such work. (Painter Enisele also had exercised his carpenter's seniority because of abolishment of paint

3. IT IS A MANAGERIAL FUNCTION TO ASSIGN NECESSARY SUPERVISION

Your Board has held on many occasions that supervision of the Carrier's employes is a managerial function, and that it will not be disturbed unless proof is shown by Claimant and that the Carrier acted in bad faith, was arbitrary or capricious, in the exercise of same. The Carrier maintains that such proof has not been shown, and it is its honest opinion that the Carrier furnished proper and sufficient supervision in the person of the Bridge & Building Foreman to properly supervise the work of washing by Painter John Gerk at Longfield Shanty, Blue Island. To force the Carrier to furnish additional supervision in the guise of a painter foreman in the instant case would be, in effect, usurping the Carrier's right to manage, and would also be wasteful of manpower and would serve no useful purpose.

The Claim of the Organization should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant, John Gerk, holds seniority as a Painter Foreman. The "paint gang" on the property had been abolished for some time before the dates set forth in the claim because of a lack of work. Carrier desired to wash and clean the walls and ceiling of a shanty in the Blue Island yard at Blue Island, Illinois. Claimant Gerk was then working as a carpenter in the B&B Sub-Department when another painter, likewise employed, and himself were assigned to this work of washing and cleaning of the shanty walls, which is painter's work. A B&B Foreman, holding no seniority as a Painter Foreman, was assigned to supervise the work, his principal duties consisting of the keeping and reporting time and material.

Claimant contends that inasmuch as the seniority classification of Painters includes, by agreement between the parties, the position of Painter Foreman, then performance of Painters and Painting work must be conducted under the supervision of a Painter Foreman. Claimant, in support of his position, relies upon Rule 1 of the Agreement—the Scope Rule and Rule 23—Seniority Roster, contending that assigning a B&B Foreman to supervise painters' work was a violation of his seniority right as a Painter Foreman, and that he is entitled to be paid the difference between the rate already paid him and the Painter Foremen's rate.

Carrier, to the contrary, urges that in assigning a B&B Foreman to supervise this work it was properly exercising, under the rules, its managerial function in providing necessary supervision; that in determining Claimant's and Carrier's rights, respectively, in the premises, we must consider the Agreement in its entirety.

Rule 10 (n) of the Agreement provides as follows:

"(n) Assignment of Work: Employes will be confined to work of their respective classifications insofar as consistent with economical maintenance and construction, but where required the foreman will have the right to assign anyone to any work there is to be done that, in the foreman's judgment, he is competent of doing. This shall not be applied to require men of one class to regularly perform the work of another class, except as permitted in Section (e) of this rule."

It will be noted, in the rule, that it specifically permits the Foreman to be the judge in assigning anyone to work there is to be done, regardless of the respective classification, insofar as consistent with economical maintenance.

Carrier insists that its temporary assignment of Claimant to washing and cleaning walls is consistent with economical operation.

In Rule 21—Seniority, we note the following: "Seniority rights of all employes will be confined to the sub-department in which employed." Claimant's classification came under "(1) Bridge and Building Sub-Department." This language indicates that seniority rights are confined to the sub-department, and not to a particular class therein.

It is quite evident from the Agreement that it was the intention of the parties to it to allow Carrier under the rules to exercise complete freedom in the assignment of work to the different classes of employes in the B&B Sub-Department.

An examination of the record discloses that other than the keeping of time and material, the B&B Foreman did not instruct the parties nor direct them in the details of their work. Under such circumstances, the B&B Foreman is not doing the work of a Painter Foreman. The need of supervision, in the absence of Agreement provisions to the contrary, is a matter within the prerogatives of management. See Award 6705, Donaldson; Award 7059, Carter; Award 11702, Engelstein.

There is nothing in this record which would justify a sustaining award.

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 7th day of August 1964.