

Award No. 13357
Docket No. MW-12815

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(1) The Carrier violated the effective Agreement when, from March 14 through March 31, 1960, it assigned and used Bridge and Building Carpenters, who hold no seniority in the class of painters, to perform painting work inside the New Yard Office Building at Taylor Yards, Los Angeles, California, instead of using employees holding seniority in the class of painters.

(2) Painter Foreman Stanley Twerion, Painters M. P. Connelly, J. L. Miller, C. A. Rajewich and E. W. Fredrickson each be paid at his respective straight time rate for an equal proportionate share of the 224 man-hours consumed by the Bridge and Building Carpenters in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant Painter Foreman and Painters have established and hold seniority in Group 2 of the Bridge and Building Sub-department and were regularly assigned as such during the month of March, 1960 on B&B Paint Gang No. 1 on the Los Angeles Division.

During the period from March 14 through March 31, 1960, the Carrier assigned and used Bridge and Building Carpenters assigned to B&B Gang No. 3, who hold no seniority rights in the class of painters, to paint the interior of the New Yard Office Building at Taylor Yard, Los Angeles, California.

The work was of the nature and character that has heretofore been historically and traditionally assigned to and performed by employees holding seniority in the painter classes of the Bridge and Building Sub-department.

The foregoing, Carrier submits, demonstrates that Petitioner is attempting to secure from this Division an expansion of the provisions of Rule 4 of the current agreement to segregate duties of classes within a single sub-department, a result which the framers of the rule deliberately agreed should not be done — see Carrier's Exhibit "E" and Award 6705, discussed and quoted in part hereinabove, particularly this Division's remarks in connection with that Exhibit which in the case there disposed of, was identified as Carrier's Exhibit "D".

CONCLUSION

Carrier requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: During the period from March 14 through March 31, 1960, Carrier assigned carpenters in Class 4 and helpers in Class 5 of Group 1 of the Bridge and Building Sub-department to paint the interior of the new yard building at Taylor Yard, Los Angeles, California.

The Brotherhood of Maintenance of Way Employees, on behalf of the named Claimants, a painter foreman in Class 1, and painters in Class 4 of Group 2 of the same Bridge and Building Sub-department maintains that Carrier violated the Agreement when it assigned the aforesaid carpenters and helpers to do painting. It contends that under the Scope and under Rule 4 of the Agreement this work should be assigned to employees with seniority rights in the painter classification.

The central issue in this dispute is whether the Agreement requires a distinct separation in types of assignments between groups in a single sub-department.

Rule 3 states that seniority rights of all employees are confined to the sub-department in which they are employed. The Claimants and the carpenters and helpers who performed the painting are in the same sub-department.

Rule 4 states that seniority of employees shall be carried by class and sets up classifications by sub-departments, groups, and classes. This rule specifically permits the transfer from one class to another and from one seniority group to another in the same sub-department without forfeiture of seniority in the class or seniority group from which transferred. It appears to us that this rule permits some flexibility in assigning painting work either to the painter foreman and painters or to the carpenters and helpers. In Award No. 6705 involving the same rules and a comparable issue, the division of work between different groups of a single sub-department, the Board rejected the Brotherhood's contention that the work of the painter foreman class was so distinct and separate from that of the Bridge and Building foreman class that the seniority rights of the painter foreman were violated when a Bridge and Building foreman was assigned to supervise painters. In 1935, a Memorandum of Agreement which became Rule 4 was negotiated. As in the cited Award we find that the correspondence relative to this Memorandum of Agreement of 1935 supports the conclusion that the primary purpose of the classification of employees into seniority groups was to make more equitable the application of the reduction in force rule. The classification in itself, therefore, did not impair Carrier's right to deploy its work force so that a carpenter foreman of one group could be assigned to supervise painters of another group. In the case at bar, all the painters

were already working. Carrier, therefore, properly apportioned the painting work to carpenters in the same sub-department. Furthermore, the Scope Rule does not describe the work of employes nor does the Agreement expressly confer upon either the painter or carpenter class duties that are mutually exclusive. In fact, the record gives evidence that, in the past, Building and Bridge carpenters have performed painting assignments.

Under these circumstances, we hold the Agreement was not violated.

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 of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.