



Award No. 14457
Docket No. MW-14550

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold M. Zack, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE DELAWARE AND HUDSON RAILROAD CORP.**

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

(1) The Carrier violated the Agreement when it assigned Painter J. J. O'Grady to perform Painter Foreman's work on and subsequent to October 5, 1961 and failed and refused to compensate him at the Painter Foreman's rate of pay. (System Case No. 16.62 MW).

(2) Painter J. J. O'Grady be allowed the difference between what he received at the Painter's rate of pay and what he should have received at the Painter Foreman's rate of pay account of the violation referred to in Part (2) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On the Saratoga Division, painters and painter helpers have customarily and historically been supervised, directed and assisted by painter foremen. However, the Carrier moved the headquarters of Gang B-10 to Albany, New York, but it failed, to assign a painter foreman to supervise the painters and painter helpers assigned to this Gang. This is reflected in a bulletin reading:

“Colonie
October 2, 1961

B&B Bulletin No. 12
All Concerned:

Effective 7:00 A. M., Thursday, October 5, 1961, the headquarters for all painters and painter helpers in Gang B-10 will be changed from Colonie, N. Y., to Albany, N. Y.

Employees affected may exercise such displacement rights, based on their seniority, in accordance with the provisions of Rule 3E of the current working agreement with the brotherhood of Maintenance of Way Employees.

/s/ A. W. Cruikshank
Bridge & Building
Supervisor”

The claimant was required to perform the work of a painter foreman in Gang B-10 on October 5, 1961, and on subsequent dates but the Carrier failed and refused to compensate the claimant at the painter foreman's rate of pay.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated November 15, 1943, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Prior to October 5, 1961, Painters O'Grady (the claimant), O'Clair and Erno were working under Carpenter Foreman Hopson with headquarters at Colonie, New York. These three men were the only B&B Painters assigned to the Saratoga Seniority Division and as such were charged with performing all of the B&B painting between Albany, 4.7 miles south of Colonie, and Whitehall, 73 miles north of Colonie.

Effective Thursday, October 5, 1961, Painters O'Clair and Erno were ordered by Foreman Hopson to report at the General Office Building in Albany to do painting of a routine nature, and to continue to report to the General Office Building until further notice. Upon returning from vacation on Monday, October 9, 1961, claimant O'Grady also reported at the General Office Building to perform routine painting work. During the period Monday, October 9, 1961 through and including Monday, October 23, 1961, all three B&B Painters, i.e., O'Grady (the claimant), O'Clair and Erno continued to perform routine painting work in the General Office Building at Albany. Effective Tuesday, October 24, 1961, claimant O'Grady was once more ordered to report to Colonie and he continued to work from Colonie headquarters until September, 1962.

OPINION OF BOARD: On October 5, 1961 Painter O'Grady was assigned to work at the General Office Building in Albany. There was no Painter Foreman assigned to supervise the crew of which he was a member, although Carpenter Foreman Hopson did keep the time and sign the time cards of the painting crew.

The Organization contends that O'Grady was doing Painter Foreman's work; that the Carpenter Foreman was prohibited by the parties agreement from doing Painter Foreman's work because he held no seniority in the Painter Foreman's class and was not employed in that class; and that therefore the Claimant is entitled to compensation at the Foreman Painter's rate for time spent supervising his work crew.

The Carrier denies that the Claimant was either required to or did perform the work of Painter Foreman. It deems irrelevant the claim that the Foreman Carpenter was doing Foreman Painter's work. In the absence of a showing that the Claimant was actually performing foreman's work, the Carrier concludes that the claim must be denied.

The general issue before us is whether the Claimant did such work as to justify his being paid at the Foreman Painter's rate. The fact that some tasks such as keeping time cards were done by someone other than the Foreman Painter has no bearing on this case wherein the claim is based on an alleged assignment of O'Grady to the performance of Painter Foreman's work.

It is clear that the Carrier reserves the right to assign foremen as it deems necessary. (Award 4992, Carter) Claimant's case must rest on a showing that O'Grady was assigned to the foreman's position or that he did in fact perform foreman's work. Although the assertion was made that he did perform such foreman's work, there was no evidence provided to support the alleged assignment to, or performance of, foreman's work and accordingly the claim must be denied. (Award 13765, Weston)

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 Agreement 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 24th day of May 1966.