

Award No. 14885
Docket No. MW-15736

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

FORT WORTH AND DENVER RAILWAY COMPANY

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

(1) That the carrier violated the agreement when it assigned B&B carpenters and B&B helpers, who hold no seniority as painters, to paint the Trinity River Bridge near Fort Worth, Texas when painter L. E. Stallcup was available for this work. (Carrier's file W-56).

(2) That Mr. L. E. Stallcup now be paid for 142 hours at \$2.4648 per hour.

EMPLOYEES' STATEMENT OF FACTS: The claimant has established and holds seniority as a Painter in the Bridge and Building Department.

Prior to February 6, 1964, Bridge Gang No. 8 installed new steel angles, approximately 30 feet long and 6 inches wide, on the stringers of the Trinity River Bridge near Fort Worth, Texas. The work consisted mainly of attaching two angles to the topside and one angle to the outside bottom of each of the stringers with bolts. One coat of red lead paint (primer) had been applied to each of the new steel angles prior to their delivery to the work site.

On February 6, 7 and 10, 1964, Carpenters and Carpenter Helpers assigned to Bridge Gang No. 8 applied one coat of aluminum paint to the newly installed angles and then applied one coat of black tire cement paint to the bottom flange of said angles and to the deck of the bridge. All of the Carrier's paint forces, including the claimant were furloughed during this period.

One hundred forty-two (142) man hours were consumed by the members of Bridge Gang No. 8 in the performance of the painting work.

The subject painting work was of the nature and character that have been traditionally assigned to and performed by B&B Painters.

The claimant, who was senior to all other B&B painters on the Carrier's entire system, was available, fully qualified and could have efficiently and expeditiously performed the subject work had the Carrier called and assigned him thereto.

The Agreement in effect between the two parties to this dispute dated January 1, 1955, together with supplements and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: B&B Gang No. 8 had been assigned the work of putting new angles on the stringers of steel bridge over the Trinity River at Mile Post 2.71, Fort Worth, Texas. The job involved replacing angles on nine panels of the stringers, six angles to a panel, or a total installation of 54 angles.

The angles were new steel. The angles were applied with two on each topside of the stringers and one on the outside bottom of the stringers.

Since the angles were new steel, a prime coat of aluminum paint was required before being bolted to the stringer panels and in pursuance of long and heretofore unprotested practice on this property, the members of the B&B gang No. 8 applied this paint to the two backsides of the angles before they were installed.

The angles were secured to the panel stringers by new nuts and bolts 2½ inches in diameter. After the angles were bolted in place, the members of B&B Gang No. 8 used five gallons of aluminum paint and 60 man-hours in painting the bolt heads and nuts and the front sides of the angles in pursuance of a long and heretofore unprotested practice on this property. This particular work was performed by the B&B gang on February 6, 7 and 10. The prime coat of paint was applied to protect new metal.

Claimant was fully employed throughout the period of the claim and was compensated therefor at the rate of \$2.4648 per hour.

A copy of the currently effective collective agreement between the parties to this dispute is on file with the Board and by reference is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: B&B Gang No. 8 was assigned the work of putting new angles on the stringers of a steel bridge over the Trinity River. The angles were new steel which were delivered to the job site coated with red lead. The B&B Gang applied what Carrier calls a prime or protective coat of aluminum paint to the new steel, the bolt heads and nuts. Petitioner says that since the steel was delivered to the job site coated with red lead: (1) the aluminum paint was a second coat; (2) the application of a second coat of paint is work reserved to employes in the classification of Painters; and (3) Claimant had the contractual right to the work.

The Scope Rule is general in nature. Rule 2 — Classification reads:

“(b) An employe skilled in and assigned to the mixing, blending, and applying paint either by brush or spray, will be classed as a Painter.”

The record makes clear that the practice on the property was that B&B gangs had historically and customarily applied a protective coat of paint to new steel used in repair of bridges; and, any further required painting was reserved to employes in the Painter classification. But, says Petitioner, the protective coat was on the steel (red lead) when it was delivered; therefore, the application of the aluminum paint was reserved to Painters.

The issue is one of fact: Was the practice confined to having the B&B employes apply a protective coat only to bare steel; or, did it extend to a first coat to steel already coated with red lead? Petitioner adduced no factual evidence of what the practice had been; nor did Carrier. Consequently, we cannot resolve the issue. We, therefore, are compelled to dismiss the Claim for failure of proof.

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 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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1966.