Award No. 16961
Docket No. MW-17576

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORFOLK AND WESTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it assigned the work of scraping, cleaning and painting Cotton Mill Bridge No. 66-B to Class 1, Group 2 forces instead of to Group 2, Class 4 forces. (System File M-1775)

(2) Painter Foreman T. L. Anderson and Painters W. C. Paulett, H. W. Reed, J. H. Simmons, L. D. Thomas and J. L. Wooldridge each be allowed 8 hours' pay at their respective rates for October 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 31, 1966, and for each day thereafter that the violation referred to within Part (1) of this claim continues to exist.

EMPLOYES' STATEMENT OF FACTS: The claimants have established and hold seniority in their respective grades in seniority class 4 of Group 2. During the period here involved they had been assigned to and were performing the work of scraping, cleaning and painting Cotton Mill Bridge No. 66-B at Lynchburg, Virginia.

Beginning on October 6, 1966, the Carrier assigned Carpenter Foreman Bradbury and his entire carpenter force (Carpenter Force No. 2), who do not hold any seniority within seniority class 4 of Group 2, to assist the claimants in the performance of the above described work. Work of the character here involved has heretofore been exclusively assigned to and performed by employes within seniority class 4 of Group 2.

Claim was timely and properly presented and handled by the Employes 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 December 16, 1963, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

We are citing Rule 2 as well as any other rule in the MW Agreement that might pertain thereto in support of our request."

Carrier declined the claim.

OPINION OF BOARD: The issue here is whether or not Carrier breached its Agreement of December 16, 1963 with the Organization. The dispute arose when Carpenters, designated as Class 1 under Rule 2 (titled Seniority Groups Classes and Grades), were used to scrape clean and apply some primer coat to a bridge, the Organization claiming such work should have been done by Painters who are designated as Class 4 under the said Rule 2.

The claim is based on an alleged violation of Rule 2 augmented by an alleged traditional practice of exclusive reservation of such work to Class 4 forces.

Rule 2 alone will not support this claim — it is simply a seniority rule governing order of assignment to work among members of a craft. As such it was not intended to confer exclusivity of right to a particular task. Award 12313 (Wolf)

What does the record on the property show relative the issue of exclusive past practice? Forty-two Class 4 employes made affidavits which were presented to Carrier in conference and which state "it has always been historically and traditionally the work of painters and painter helpers to perform the service of scraping and cleaning a surface prior to painting same." This language is very similar to that employed in the claim sustained in Award 13446, a dispute between the identical parties involved herein. In each instance neither the word "exclusive" nor "exclusively" was used, but we adopt the reasoning enunciated in Award No. 13446 that while such words are not used, "it is a fair inference that they intended to convey that impression." As a matter of fact the language in the affidavits used in the instant case makes a stronger assertion of exclusivity, an assertion that Carrier elected to let go unchallenged on the property. Only after the dispute left the property did Carrier offer evidence that this type of work had not been traditionally reserved exclusively to Class 4 employes; under our Circular 1 and many decisions we must ignore this tender of proof. We, therefore, conclude that we are bound by a record which does make out a prima-facie claim on behalf of claimants, a claim which Carrier failed to effectively refute on the property.

Again, as in Award 13446, this decision should not be cited as being ultimately dispositive of the issue of exclusivity on this property for this work.

The record reflects that the Agreement was violated.

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 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 20th day of February 1969.

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