

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19441
Docket Number MW-19474

Robert M. O'Brien, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(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 used Carpenter E. Brown instead of furloughed Painter C. E. Jones to perform the work of painting crossing signs from Frankfort, Indiana to A & S Tower at Madison, Illinois on November 10, 11, 12, 13, 14, 17, 18, 19, 20 and 21, 1969. (System File MW-MUN-69-7).

(2) Painter C. E. Jones be allowed eighty (80) hours' pay at the painters' straight time rate because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The claim arose when Carrier assigned Carpenter E. Brown the work of painting crossing signs. He consumed eighty hours in the performance of the work. Brown does not hold seniority as a painter, but Claimant does, although he worked as a cook during the period involved in the claim.

It is the Organization's position that Claimant was entitled to perform the work in question in preference to an employee who holds no seniority as a Painter.

They further contend that a Carpenter did not have any right to perform painting work since the classification of Painter and Carpenter are separate and distinct.

The Carrier's defense is somewhat contradictory. Carrier contends that Claimant was offered the work in question but refused it. It also contends that Claimant was not offered the work because he was not a qualified motor car operator, a prerequisite to the job.

The Organization refuted the above contentions stating that Claimant never knew of the work until Brown informed him of it, and further claiming that all B&B foremen, (which includes Claimant, are, per se, qualified motor car operators.) Thus, the burden of proving their contentions shifted to the Carrier. Carrier failed, however, to sustain the burden successfully on either allegation.

Referee Criswell in Award 17093, involving the same parties and essentially the same issue as presented herein, said, in pertinent part: "This Agreement makes clear in Rule 1(c)2 that there are different and specific classes of B&B Department employees. Although, as this Board has said before, titles are an uncertain guide to the actual duties of a position, some types of work fall under an occupational title according to common understanding. It is the case with painter and carpenter." We subscribe to the reasoning in Award 17093.

It is undisputed that Claimant holds seniority as a Painter. We are of the opinion that he should have been assigned the painting work in question and since he was denied this work he is entitled to the amount he would have earned had he been assigned the work. We do not believe that because he was otherwise employed during the period in question, he is not entitled to the requested compensation. For this reason we will sustain the claim.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. G. Kellum
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1972.