

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20082
Docket Number MU-19921

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Kansas City Terminal Railway Company

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

(1) The Carrier violated the Agreement when it assigned an employee who holds no seniority as a painter (Welder Mechanic H. Duffer) to paint regulator boxes on May 13 and 20, 1971 (System File MW-8.71.180).

(2) Mr. J. Dickson be allowed sixteen (16) hours of pro-rata pay because of the aforesaid violation.

OPINION OF BOARD: The Petitioner alleges an agreement violation resulted when, on May 13 and 20, 1971, the Carrier assigned Welders and Welder Helpers, Maintenance of Way Group 3 employees, the work of painting eighty (80) metal regulator boxes, 16" x 16" x 16". The painting was done during the course of maintenance work performed by the Welders on automatic propane switch heaters.

The claim is that the painting of the regulator boxes is work reserved CO Painters of the B&B Department under Rule 2, Group 6, Classification of Work, of the Agreement. The Carrier contends that if work was transferred from Group 6 employees, (Painters) to Group 3 employees (Welders), then the transfer is sanctioned by Article III, Section I of the February 7, 1965 National Job Stabilization Agreement and, consequently, any dispute in reference to such transfer of work would be referable to the Disputes Committee established by the National Agreement rather than to this Board. The Carrier also asserts that the installation and maintenance of automatic propane switch heaters is work properly performed by Maintenance of Way, Group 3, Welders, and that the disputed painting constituted but a minor part of such maintenance.

The pertinent agreement provisions read as follows:

"ARTICLE III - IMPLEMENTING AGREEMENTS

Section 1 -

The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement the carrier shall have the right to transfer work

"and/or transfer employees throughout the system which do not require the crossing of craft lines: The organizations signatory hereto shall enter into such implementing agreements with the carrier as **may** be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces made necessary by the **contemplated** change. One of the purposes of such implementing agreements shall be to provide a force adequate to meet the carrier's requirements."

"Rule 2 - Classification of Work

BRIDGE AND BUILDING DEPARTMENT

GROUP 6: Except **as may** be covered by the Union **Station** Maintainers' Agreement, work connected with the cleaning and preparation of **any** surface by washing, scraping, chipping or sandblasting, incidental to, and the application of stain and varnish, paint, cslcimine, whitewash, or preservative by brush, spray or other methods, shall be classified as Painter's work; lettering, **stencilling, graining,** finishing, etc. **and** the replacing of glass in sash, shall be clsssifted as Sign Painter's work.

GROUP 3: Work connected with the operation of gas or electric welding devices, or cutting torches, as required by the various departments of the Maintenance of **Way** Department and repairs to Maintenance of Way motor cars, machines **and equipment, shall** be classified as Welder's work. Helpers shall perform work generally recognized as Helper's work and will assist Welders **in** the performance of their work. Helpers will be given opportunity to learn work of the Welders.

* * *

In addition to qualifications of a Welder, a Welder Mechanic shall be **qualified and** responsible for the maintenance **and** repair of assigned roadway machines and equipment, motor vehicles, diesel and gasoline engines. Welders, holding seniority in Group 3, Class 2, will be given opportunity to fill vacancies created in Class 1. Assistant Welders shall be in training for promotion to Class 2 and must be **able** to speak, read and write the English language.

We shall first consider the Carrier's **jurisdictional** objection. In this Board's prior Award 17982, involving these same parties **and** the same contentions concerning the February 7, 1965 National Agreement, we held that where **an** employee, who **was** not a Welder, used a cutting torch (welder's work), the situation did not come within the provisions of the National Agreement. In that Award this Board stated:

"AWARD 17982:

We find nothing in the record before us that Carrier transferred work within the contemplation of 'the carrier shall **have** the right to **trans-**fer work' as employed in Article III, Section 1, of the National Job Stabilization Agreement of February 7, 1965, supra. We, therefore hold that Agreement is not applicable in the instant dispute **and** deny Carrier's motion that this Board dismiss the Claim for lack of jurisdiction."

Similarly, in this dispute, we **have** before us an alleged improper assignment of painters' work to a welder. This is not a transfer of work within the meaning of the National Agreement and, thus, this Board has jurisdiction to consider the merits of the dispute.

We come now to the basic issue of whether the painting of the regulator boxes comes within the scope of "maintenance", as such term is used in Rule 2, Group 3, or within the scope of "work connected with **the...preparation** of **any** surface **and** the application of **...paint...shall** be classified as Painter's work", **as** set forth in Rule 2, Group 6. The term "maintenance" is of course sufficiently broad to cover the disputed painting; however, the text of Rule 2 Group 6, makes it clear that such **was** not the intent of the parties. This latter text, in specific, unambiguous terms, designates as Painter's work the painting of "**any** surface". Thus, there **can** be no doubt that the Rule 2, Group 6, text covers the herein painting of regulator boxes. We further conclude that the painting cannot be brought under Rule 2, Group 3, by labeling the painting as minor maintenance or **as** incidental to maintaining the regulator boxes. In this regard this Board stated, in Award 17982, that:

"* * * . . ., we find that while the cutting of the steel rods was necessary to the breaking up and removal of the deteriorated sidewalks the cutting cannot be held to be an incident of the **B&B** work which would negate the Welders **and** Welders Helpers unqualified unequivocal, Rules established, exclusive right to 'work connected with . . . cutting torches . . .' The use of cutting torches is always an incident in a project in which they are necessarily used.
* * *"

Although painting, likewise, is an incident in **many projects**, the parties did not write any limitation or exception into Rule 2, Group 6, in respect to incidental painting. This Board therefore has no reason to treat the herein painting as incidental to the Welder's maintenance work, for, to do so, would negate the clear, unambiguous text of Rule 2, Group 6.

In view of the foregoing **we** shall 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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1974.