

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20454
Docket Number MW-20370

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Burlington Northern Inc.

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

(1) The Carrier violated the Agreement when it used Painter **Foreman C. Schwartz** instead offurloughed **Painter E. L. McKinney** to perform painting work beginning April 5, 1972 at Hastings, Nebraska (System File 33-P-3/MW-84(p)-16/21/72).

(2) Painter E. L. **McKinney** be paid for **all** time lost from April 5, 1972 because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The Carrier cut back a four **man** painting crew, so that only the Foreman was left. He then performed painting work, but did so under the title of Foreman and **was** paid at the **Foreman's** rate. The claim is that the Claimant, a furloughed Painter, should be paid for the painting work performed by the **Foreman**. The **Claimant holds** a Painters' seniority date of September 14, 1971 on the Lines West Painters' Roster. The Foreman holds *seniority* as a Painter on the same roster; his **Painters' seniority** date is September 3, 1941.

The pertinent agreement texts are found in Rule 55 B and J, and in Paragraph 6 of Appendix K:

"RULE 55. CLASSIFICATION OF WORK

* * * * *

B. Foreman.

An **employee** assigned to direct the work of men **and** reporting to officials **of** the railroad shall be classified as a Foreman.

* * * * *

J. Painter.

An employee assigned to **mixing**, blending, sizing, applying of paint, kalsomine, whitewash, or other preservatives to structures, either by brush, spray or other methods, or glazing, including the cleaning **or** preparation

"incidental thereto, shall be classified as a painter.
(~~This~~ will not preclude the use of carpenters to do painting or helpers to perform preparatory or other work customarily accepted as helpers' work).

* * * * *

APPENDIX K

The following understandings are agreed to in connection with the new Maintenance of Way Agreement:

* * * * *

6. It is agreed that **employees** holding seniority as painters on any of the former railroads will be given preference to painting work to the **same** extent as prior to the effective date of this Agreement."

The Employees argue that the Foreman was restricted from performing the painting work by **Rule 55 B** and that the Claimant **was** entitled to such **work** under Rule 55 J. Apparently, the predicate **of** this argument is that a Foreman's position and a Painter's position have a distinct demarcation line in the character of the work accruing to each position. The **Employees'** argument may have been applicable to the facts and rules involved in the sustaining Awards cited in support **of** the claim; **however**, the argument has no relevance in this case. The determinant in this case is the provision in paragraph 6 of Appendix **K** which sets out the preference rights of employees having Painter's seniority on the **former** railroads which have been merged into the herein **Carrier**, the Burlington Northern, Inc. Such provision quite clearly preserves a preference to painting work, but only for employees who had Painters' seniority **prior** to the effective date of the current Agreement, May 1, **1971**. **The Foreman** involved in this **case** holds a Painters' seniority date of September 3, **1941**, which is prior to the effective date of the Agreement. The Claimant, in contrast, holds a Painters' seniority date **of** September **14, 1971**, which is subsequent to the effective date of the Agreement. Thus, under paragraph 6, Appendix K, the involved Foreman has a preference to painting work, while the Claimant has **no** preference at all. Accordingly, as between the Claimant and the involved Foreman, there is no basis on which to say the Claimant is entitled to the painting **work** performed by the Foreman. The claim shall be denied.

See recent Third Division Award No. 20308 for a **similar** interpretation of paragraph 6, Appendix K, as well as for a more detailed **discussion** of the preference rights established therein.

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive **Secretary**

Dated at Chicago, Illinois, this 25th day of October 1974.