

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22190**
Docket Number **MW-22280**

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(The Baltimore and Ohio Railroad Company

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

(1) The Carrier violated the Agreement when it assigned a Shop Craft **employee** instead of Bridge and Building Department forces to paint roll-up doors at the **Cumberland** Diesel Shop on or about February 28, 1976 (System File CUM-631/Z-MG-1581).

(2) Because of the aforesaid violation, Carpenters J. R. **Haines** and W. W. Hott each be allowed pay at their respective rates for an equal proportionate share of eleven (11) hours and forty-five (45) minutes expended by a Shop Craft **employee** in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: A Shop Painter painted yellow safety strips at the bottom, inside and outside, of four (4) **roll-up** doors, at Carrier's Diesel Shop in **Cumberland**, Maryland.

Claimants are painters in Carrier's Bridge and Building Department and claim painting of said doors as work reserved within the Scope and Rule 1 of the Maintenance of Way Agreement.

Carrier defends the claim on the grounds the painting of yellow safety strips on the bottom of the roll-up doors was for safety purposes, as distinguished from general painting of structures alluded to in the Maintenance of Way Agreement, and the instant work was properly performed by a Shop Painter consistent with the division of painting work which has existed down through the years at the **Cumberland** Shop.

The Brotherhood of Railway Carmen of the United States and Canada, representative of the Shop Painter, has been notified of this dispute and has declined to make submission to this Board. Accordingly, we have discharged our responsibility under **Transportation-Communication Employees Union vs. Union Pacific Railroad Company** (385 U.S. 157, 1966).

There are assertions in the record made by Carrier and denied by the Organization as to past practice involving the work in dispute. There seems to be, in Carrier's position, a tacit admission that the right to do the work, by others than Claimants, existed only if for the safety factor involved. We find, upon reading of the Scope Rule, that certain work may be performed by other than B&B forces when safety is involved. However, such exception is premised upon the unavailability of **B&B** forces.. The controlling language of Scope (b) 6 reads:

"The following work when **performed** by other than **B&B** forces:

(a) Minor repairs to roundhouses, storehouses and other shop buildings and material storages within the confines of the shop or store yards pertaining to safety, when B&B forces are not available, such as repairing broken boards in floors or platforms, and installing window panes." (Underscoring added)

We have considered the record carefully and in view of the specific language of Scope (b) 6, Supra, and the lack of evidence showing non-availability of B&B forces at the time the disputed work was performed, we will sustain the claim on behalf of the two Claimants as presented in the Statement of 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**;

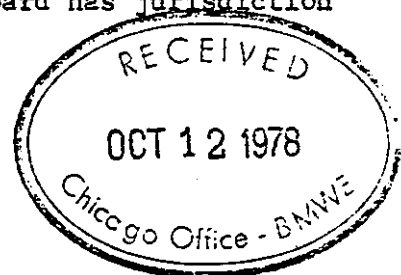
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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. Paulos
Executive Secretary

Dated at Chicago, Illinois, this **29th** day of September 1978.