

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24717
Docket Number NW-24689

Edward L. Suntrup, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Detroit, Toledo and **Ironton** Railroad Company

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

(1) The Carrier violated the Agreement when it assigned Car Department forces instead of Bridge and Building **Department** forces to paint the interior and exterior of building and install doors at Jackson, Ohio September 15, 1980 through October 11, 1980, both dates inclusive (Carrier's File 8365-1 (116)).

(2) As a consequence of the aforesaid violation, the following claimants (B&B **employees**) shall be allowed pay as follows:

	<u>Pro Rata</u>	<u>Time and One-Half</u>
C. Hay	160 hrs.	16 hrs.
S. Walker	160 "	32 .
J. L. Elliott	80 "	
R.R. Ray	40 "	
M. E. Petty	40 hrs.	

OPINION OF BOARD: This is a pay claim submitted by the Organization to the Carrier by letter dated November 12, 1980 for the five (51 Claimants named in the Statement of Claim. It was alleged by the Organization that certain painting work performed at the Carrier's Jackson, Ohio Shops was performed by non-Brotherhood employees in violation of the current Agreement. There is **no** evidence in the record by the moving party with respect to the exact type of interior and exterior painting done on the dates in question by the Carmen. The Brotherhood filed this claim that the painting included **"the** interior and exterior of buildings and hanging **doors"**, the Carrier's contention is that **"the** majority of (the) work consisted of painting material racks, mobile and fixed equipment and safety color coding" in the interior of the buildings at the Jackson Shops, with an additional twenty-four (24) hours consumed when the same **"Shop** forces painted the exterior of several buildings".

With respect to the interior painting, the Board cannot find sufficient evidence in the record by the moving party to refute the Carrier's position that such work had not been the exclusive purview of the Brotherhood in the past. A number of letters in the record suggest that given members of the Brotherhood **or** Carmen had or had not **performed** certain work in the past. Taken by themselves these letters are mt of such probative value to establish exclusivity. Further,

the Organization places strong reliance on the Scope Rule of the current Agreement. Numerous Awards of the Board, however, have held that Scope Rules in contracts represent general, descriptive divisions of **labor** rather than specific job functions. (Third Division Awards 14075, 19894 inter **alia**). With respect to the exterior painting work in question, it appears, by the admission of the Carrier itself, that this type of painting may well fall under the aegis of exclusive past practice. There is nothing in the record, however, to suggest that the total number of hours at stake when the exterior of the buildings were painted exceeds twenty-four (**24**). Each of the five (5) Claimants shall, therefore, be paid four-point-eight (4.8) hours pro rata pay.

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 Employee 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 in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 9th day of March, 1984

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