

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26005

Docket Number MW-25899

George S. Roukis, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employees  
( Southern Pacific Transportation Company (Eastern Lines)

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

(1) The Carrier violated the Agreement when it assigned P&M Department forces (Clerks) instead of Bridge and Building Department forces to scrape paint and prepare the floor of 'Store C' at Fulton Street store rooms for painting (System File MW-83-43).

(2) As a consequence of the aforesaid violation, B&B employees W. E. Williams and R. Joe shall each be allowed sixteen (16) hours of pay at their respective straight time rate."

OPINION OF BOARD: The Organization contends that Carrier violated the Controlling Agreement, particularly Article 1 (Scope Rule) when two employees holding no seniority within the Maintenance of Way and Structures Department were used to scrape paint and prepare the floor of Store C at Fulton Street storerooms for painting. The disputed work allegedly occurred on March 29 and 30, 1983. The Organization asserts that painting accrues to the Bridge and Building Department and, as such, all work integral and supportive of the painting function belongs to B&B employees. It avers that the letter submitted by one of the Purchasing and Material Department Clerks who performed this work implicitly confirms its position and, accordingly, the claim as presented is justified. This letter reads:

"To Whom It May Concern:

This is to advise that on March 29 and March 30, 1983, myself and another employee of the P&M Department, M. Moses did scrape and prepare for painting, the floor in Store C.

Yours,  
A. S. Traylor"

Carrier maintains that the two P&M Clerks were merely performing janitorial work, which in this instance, included the removal of old paint flakings from the floor of Store Room C. It observes that the Clerks were preparing the room for inspection, not painting, and floor sweeping was the primary task performed. It asserts that even if the P&M Clerks were removing paint from the floor, their actions per se would not have constituted a violation of the B&B Agreement, since Clerks are required to perform any and all janitorial duties under the Clerks Collective Agreement. In effect, it argues that under the defining circumstances of its performance on March 29 and 30, 1983, the work cannot be said to be reserved exclusively to B&B employees by agreement or past practice.

In our review of this case, we concur with the Organization's position to the extent expressed herein. We recognize, of course, that an overlapping of duties can occur at times and a careful analysis of the work performed is necessary to determine whether the overlap is incidental in nature. In the case at bar, it would not be an unusual assignment for a janitorial employe to remove old paint flakings, if such removal was incidental to the main janitorial tasks. On the other hand, an assignment requiring the specific scraping and preparation of a floor area or building for painting would not be incidental in nature, but a deliberately focused preparatory step for the primary painting assignment. This would necessitate, by definition, a judgment to determine the degree of preparation and this task would accrue to the skilled employe. In this instance, the Clerks Organization has not claimed this work and the record is bereft of any clear specific evidence that Clerks routinely scraped paint as a preparatory step for a painting assignment. Upon this record, we find that a violation of Article 1 (Scope Rule) occurred, but we cannot agree with the Organization position that the two days straight time compensation is justified. The information provided by the P&M Clerk did not indicate how long he and his co-worker performed the work, or whether it was part of his broader janitorial assignment. He only indicated that he performed this work. In this connection, where a monetary claim is presented, we believe that it is incumbent upon the moving party to spell out in detail what work was performed and the exact time dimension of that performance. While we are persuaded that the P&M Clerks performed work in this instance that by nature and task function accrued to the B&B Department, we are not convinced that the Organization has quantitatively demonstrated any justification for the compensatory amount claimed. Since a breach occurred, and it should be addressed, we will sustain the claim for two hours straight time payment. This is a fair and equitable disposition under the facts of this dispute.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 to the extent set forth in the Opinion.

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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 25th day of April 1986.