

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27478  
Docket No. MW-26711  
88-3-85-3-457

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Union Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it assigned carpenters instead of painters to paint the loading dock at Oakley, Kansas on April 13, 1984 (System File M-31/031-210-8).

(2) Because of the aforesaid violation, furloughed Painter D. M. Serrault shall be allowed twelve (12) hours of pay at the painter's straight time rate."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute originated in April, 1984, when four employees of Building and Bridge Gang 3441 were assigned the task of repairing the loading dock at Oakley, Kansas. The B&B gang consisted of a Foreman and three carpenters, and they spent approximately one week repairing and rebuilding the loading dock. The repair work consisted of strengthening the dock and installing new lumber to replace rotten and missing boards and timbers. The crew also applied a primer coat of paint to the dock as a sealant, a task that took approximately three hours to complete.

The Organization filed a Claim alleging that Carrier violated Rules 1, 5 and 8 of the Agreement when B&B Gang 3441 applied paint to the loading dock in Oakley, Kansas.

The Carrier declined the Claim stating that Rule 5, Paragraph 3 of the Agreement permitted the Carrier to utilize employees of other classifications to perform other work when such work was not sufficient to justify the use of the regular classification.

The Organization contends that the work of painting the loading dock at Oakley was work specifically reserved to Group 5 Painters and that Carrier violated the Agreement when it assigned Group 3 Carpenters to perform the work. Furthermore, contrary to the Carrier's position, the Organization maintains that Rule 5, Paragraph 3 is inapposite to the present case. The work involved in this case consumed twelve man-hours of labor, the Organization notes, and Carrier failed to present any evidence which would justify its failure to properly assign the work to painters. Before the Carrier can rely upon Rule 5, Paragraph 3 to supersede the clear provisions of Rules 4, 8 and 17, the Organization asserts that Carrier has the burden to show why it did not use the classification stipulated in the Agreement to perform the disputed work. Since Carrier has not met that burden, the Organization argues, the Claim must be sustained.

The Carrier, on the other hand, argues that the application of the primer coat was incidental to the work performed by the carpenters and therefore must be deemed permissible under Rule 5.

We have reviewed the record evidence and the precedent Awards cited by the parties and are compelled to conclude that the instant Claim must be denied on the ground that the work performed was incidental to the primary work of the carpenters and permissible under the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.