

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27759
Docket No. MW-26792
89-3-85-3-543

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Soo Line 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 walls, doors, doorsills, window casings and ceiling support beams in the Car Repair Shop at Stevens Point, Wisconsin beginning September 14, 1983 (System File 1 45(c,e) 4(o)/800-46-B-174).

(2) As a consequence of the aforesaid violations the Members of B&B Crew 604 shall be made whole for all time lost beginning September 14, 1983."

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.

As Third Party in Interest, the Brotherhood Railway Carmen of the United States and Canada was advised of the pendency of this dispute, but chose not to intervene.

A Claim was presented by the Organization on behalf of members of B&B Crew 604, stating that Carmen had been used to paint doors, walls and other areas in the Car Repair Shop at Stevens Point, Wisconsin. Carrier denied this Claim on the grounds that past practice allowed it to use Carmen for painting in these situations. The Organization responded that the Agreement Rules governing painting were clear and unambiguous, "so as to supersede past practice." The Organization cites Rule 1 (Scope) and Rule 45 of the Agreement as controlling.

Rule 45 is a Classification of Work Rule which categorizes work done by members of the craft. It is not a Rule which can be used to establish exclusive purview over work. Such is the function of Rule 1 (Scope) of the Agreement. In order for the latter to be used to sustain a claim such as the instant one, the Organization must show, by means of substantial evidence, that the work in question has been, as a matter of past practice, reserved to the members of its craft on system-wide basis (Third Division Awards 24779, 25077, 25125, 25350). As moving party in this dispute, such burden of proof rests with the Organization (Second Division Awards 5526, 6054; Fourth Division Awards 3379, 3482). Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229). A review of the record fails to show that such evidence has been provided by the Organization in this case.


The Board has ruled in recent Third Division Award 27179 on a claim similar to the instant one, with the same parties involved, that it could find no violation of the Agreement when this Carrier assigned Carmen to do clean-up work which included painting. In that case the painting was done to the interior walls of the Carrier's Roundhouse at North Fond du Lac, Wisconsin. The Board finds that Award to be of precedential value, as well as consistent with its own conclusions in the instant case.

There are various arguments raised by both parties in their Submissions to the Board which were not raised in the handling of this Claim on property. Such cannot be considered by the Board in its deliberations on this case, both because of the mandate found in Circular No. 1, as well as numerous precedents dealing with this question as it applies to arbitration under Section 3 of the Railway Labor Act (Third Division Awards 24486, 24508, 24509, inter alia).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.