

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30189  
Docket No. MW-28928  
94-3-89-3-338

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(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 Switchman B. Trumball to perform B&B sign painting work in the Seattle, Washington and Albina, Oregon area beginning on February 22, 1988 through and including April 18, 1988 (System File S-13/880338).
2. As a consequence of the aforesaid violation, Oregon Division B&B Sign and Shop Painter D.R. Weigel shall be allowed the difference between the First Class Carpenter rate and the B&B Sign and Shop Painter rate for the total number of hours spent performing the aforementioned work beginning sixty (60) days retroactive from May 3, 1988."

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 employe 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.

Sometime during the first two months of 1988, the employee Safety Committee at Albina conceived a project to promote safety by the use of humorous cartoon-like signs each, with a safety message. The Superintendent approved the project, and a member of the Committee, who was employed at the time as a Switchman, painted the signs which were later put up throughout the yard. It is not clear from the record how many signs there were.

On May 3, 1988, the Organization filed a claim that the Carrier had violated the Agreement between February 22, 1988, and April 18, 1988, when it failed to assign the sign painting to a B&B employee holding seniority as painter. The claim listed a number of claim dates and hours consumed each date, totaling 214 hours.

The claim is predicated on the fact that the contract sets forth a general Painter classification and subclassification for a "B&B Sign and Shop Painter." Based on this, it is argued that the work in question is reserved to the Claimant. The Carrier defends against the claim on the basis of time limits and the merits. The Carrier's procedural argument maintains that the claim was not filed within 60 days of February 22. The Organization responds that the claim is a continuing violation, as well as suggesting that the Carrier waived its right to a time limit argument by not raising it in its first declination.

It is the opinion of the Board that the claim was filed too late. We simply are not convinced that this is a continuing violation. There evidently was a decision made at a particular point in time to have the Switchman paint the signs. This was not unknown to the Claimant who is a member of the Safety Committee. To wait until the work was completed and pass the delay off as a continuing violation smacks of "laying behind the log." There plainly is no justification in the record for waiting some 70 days after the decision was made to file a claim.

In view of the foregoing, the claim will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.