

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31202
Docket No. MW-31390
95-3-93-3-265

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(CSX Transportation Inc., (former
(Louisville and Nashville Railroad Company)

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

- (1) The Agreement was violated when the Carrier assigned Clerk T. Anderson to perform Bridge and Building (B&B) work (painting part bins and tool bins) at the Project Shop located at Radnor Yard, Nashville, Tennessee on January 20, 21, 23, 24, 27, 28, 29, 30, 31, February 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 26, 27, 28, March 2, 4, 6, 10, 12, 13, 16, 18, 20, 24, 26, 30, 1992 and continuing [System Files 13(12)(92)/12(92-547) and 13(44)(92)/12(92-747) LNR].
- (2) As a consequence of the violation referred to in Part(1) above, Nashville Terminal Seniority District B&B Carpenter G.C. Stroud shall be allowed eight(8) hours pay at his B&B Carpenter's straight time rate of pay for each of the dates cited in Part(1) above and continuing until the violation ceases."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Parties in Interest, the Transportation Communications International Union (TCU) as well as the Brotherhood of Railway Carmen Division of TCU were advised of the pendency of this dispute. The former elected not to file a Submission, while the latter did file a Submission with the Board.

This involves a Scope Rule, general in nature, which the Organization insists supports its position that the painting of parts bins located in the Radnor Yards at Nashville, Tennessee, is work exclusively reserved to BMW represented employees.

The Organization not only argues that the Rule supports its claim, but that there exists a past practice of B&B employees painting these parts bins.

The Carrier, on the other hand, denies that B&B employees have historically painted the bins and that the Scope Rule does not so provide.

The Rule reads as follows:

"RULE 1. SCOPE

Subject to the exceptions in Rule 2, the rules contained herein shall govern the hours of service, working conditions, and rates of pay for all employees in any and all subdepartments for the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employees, and such employees shall perform all work in the maintenance of way and structures department." (underscoring added)

Also quoted is Rule 5(b) which simply lists Carpenters and Painters as being a part of the "Bridge and Building Subdepartment." This work, however, did not occur "*** in the Maintenance of Way and Structures Department ***." It occurred in an area under control of the Mechanical Department.

To support its position, the Organization must establish a system wide practice of performing this work. It did provide a statement signed by six employees, which reads as follows:

"We the Carpenters and Helpers and Laborers of the B&B Gang in the Radnor yard have always in the past, painted buildings, part bins, and floors at the car shops, Roundhouse and Project Shops ***"

The Carrier denied the historical practice at the Radnor Yards and furnished a statement from a B&B Supervisor stating that:

"... These bins are part of the mechanical facility and their work operation, and historically we have never painted these part bins -- they have always maintained their own part bins."

It is the obligation of the Petitioner before this Board to establish its position with proof. It has not sustained that burden.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.