

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31764
Docket No. MW-32185
96-3-94-3-611

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

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned shop craft forces to perform Maintenance of Way work (paint the floors) at the Locomotive Shops at Cumberland, Maryland on June 28 and 29, 1993 [System File B-TC-8053/12(93-1243) BOR].
- (2) As a consequence of the violation referred to in Part (1) above, Mr. G.L. Logan shall be allowed sixteen (16) hours' pay at the carpenter's rate, plus credited with two (2) days for vacation qualification and one (1) month for retirement and all other benefits."

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 were given due notice of hearing thereon.

Pursuant to Section 3, First (j) of the Railway Labor Act, as amended, notice was given to the Brotherhood Railway Carmen Division of TCU of this claim as a possible Third Party in Interest. That Organization subsequently filed a Submission on this matter.

This dispute arose because a Carman painted floors at the Carrier's Cumberland Locomotive Shops on June 28 and 29, 1993. The Organization contends that the work performed is protected work of its craft. In so asserting, the Organization relies upon a written statement submitted by B&B employees as well as that portion of its Scope Rule which specifies that "painting ... shall be performed by the B&B forces."

The Board, after careful review of the ineffective Carmen's Submission, as well as the record developed on the property, finds that the Brotherhood of Maintenance of Way Employees' position must prevail.

In so holding, we note that the Organization's Scope Rule specifies painting as claimed. Further substance is given to this finding by written statements from the B&B workforce. Moreover, although the Organization waited until December 13, 1994, to file its Notice of Intent with the Board, the Carrier made no effort to refute the substance of the Organization's position as contained in its post conference letter to the Carrier dated May 16, 1994.

The remedy is limited to the payment of 16 hours at the straight time rate.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is order to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 24th day of October 1996.