

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 38144
Docket No. MW-36843
07-3-01-3-416

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned TCU Mechanics C. Mattson and/or T. Simonson to perform Maintenance of Way Bridge and Building (B&B) Subdepartment work (paint cabinets) at the Two Harbors Storage Facility on June 14 and 17, 2000 instead of furloughed B&B employe D. Wick (Claim No. 18-00).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Wick shall now be compensated for the total man-hours expended by the TCU Mechanics in the performance of the aforesaid work at the respective straight time rate of pay."

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.

The Claimant has seniority as a Mechanic in the Bridge & Building Subdepartment. In or around June 2000, he was working as a Mechanic at the Two Harbors Storage Facility. Prior to June 14, 2000, the Claimant constructed and installed cabinets in the Service Building at Two Harbors. He was subsequently laid off as part of a reduction in force.

When the Claimant returned from furlough, he learned that the cabinets that he had constructed and installed had been painted by two employees who were members of the Transportation Communications International Union (TCIU). The Claimant assumed that because he had built the cabinets he would also paint them.

The Organization filed a claim on behalf of the Claimant contending that he should have been assigned to paint the cabinets that he had constructed and installed because such work is reserved to Mechanics in the Bridge & Building Subdepartment by Rule 26(d). The Board disagrees with the Organization.

Numerous Awards rendered by the Board have held that Rule 26 only classifies work into categories. It does not reserve work to any of the classifications set forth in the Rule. [See, for example Third Division Awards 28399 and 29827.] Rather, the Rule is a general classification and pay Rule. Thus, it is incumbent on the Organization to demonstrate that the Bridge & Building Subdepartment has traditionally and historically painted cabinets.

The only evidence in the record to support the Organization's contention is a statement from the Claimant. He assumed that he would be assigned to paint the cabinets because he had constructed and installed them in the Service Building at Two Harbors. It was his understanding that "if you build it, you paint it." This lone statement fails to establish that Bridge & Building Subdepartment employees have traditionally and historically painted cabinets, in this Board's opinion. Therefore, the Organization failed to sustain its burden of proving that Bridge &

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Building Subdepartment employees have traditionally and historically painted cabinets. The claim is denied as a result.

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 23rd day of April 2007.