

Award No. 2869  
Docket No. MW-2912

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Luther W. Youngdahl, Referee**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES  
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood:

First: That Maintenance of Way Painters shall perform all work of painting the interior and exterior of roundhouses or other shop or store buildings, including whitewashing and such repainting of column posts and inside of doors and side walls below windows as necessary in trimming a job for good appearance.

Second: That Painter L. Mourey be paid the difference between what he earned as a Painter Helper and what he would have earned as a Painter from June 3, to 9th, 1940, inclusive, on which dates mechanical department employees performed work of painting in the roundhouse and other buildings at Alliance, Nebraska.

**EMPLOYES' STATEMENT OF FACTS:** Under date of June 3, 1940 the Carrier required and assigned employes holding seniority in other departments to perform work of painting the inside of the roundhouse at Alliance, Nebraska. Employes holding no seniority under the provisions of the Maintenance of Way Agreement continued to perform painting work from June 3 to June 9, both dates inclusive. The work performed consisted of the following: Whitewashing the upper part of the roundhouse and painting the lower part of all walls inside the roundhouse for a distance of five feet from the floor, also pillars or posts supporting the roof, and all other fixtures such as pipes, doors, window casings, one toilet room 8 x 16 feet, and two shower bath rooms.

For the period June 3 to 9 inclusive, 1940, Leonard Mourey, B. & B. painter, was employed in the Carrier's service as a painter helper. Mourey holds seniority rights as painter and painter helper on the Lines West seniority district.

Mourey was paid the helper's rate of 55 cents per hour, whereas painter's rate was 68 cents per hour, for the period comprising this claim. June 9, 1940 being Sunday, time and a half should apply for that date.

The agreement in effect between the Carrier and the Brotherhood is by reference made a part of this Statement of Facts.

**POSITION OF EMPLOYES:** Article I, Rules 4, 4 (c), and 52 (c) of Agreement in effect between the Carrier and the Brotherhood of Maintenance of Way Employes reads:

Note that the proposed provision quoted specified painters and defines the work sought for all Bridge and Building sub-department employes. The above quoted notice and the proposed rules therewith open all the working conditions of Maintenance of Way Employes for reconsideration. Here again the clean-up work of whitewashing and painting in shop, roundhouse and Store facilities will be involved.

In view of the facts and circumstances in evidence, it is the position of the Management that:

- (1) the subject of dispute in Part one of the claim has been and still is a matter of negotiation, not within the jurisdiction of the adjustment Board;
- (2) the employe named in Part two of the claim was not entitled to the work in question because it admittedly was not resolved to Maintenance of Way painters; and
- (3) the case should be dismissed for lack of jurisdiction.

**OPINION OF BOARD:** This claim should be dismissed without prejudice because it is prematurely brought.

It is unnecessary to discuss the question of notice to other parties or crafts that might be affected or the jurisdiction of the Board to hear the controversy. Award 2253 settles these matters adversely to the contention of Carrier.

Since the Board has jurisdiction over the parties and power to make an award which will bind them, the question is not whether the Board may lawfully proceed to dispose of this case but whether under the facts as here presented it ought to do so.

Considerable doubt and confusion arose on the property among several of the crafts as to who was entitled to perform the work in question. Commendably, the Organization agreed with Carrier to attempt to straighten out the difficulty by securing waivers from the various crafts so that conflicting claims would be eliminated. A number of these waivers were secured. Chairman Ames of the Firemen and Oilers refused to concede that the whitewashing work belonged to Maintenance of Way. One of the Chairmen had not yet responded. Under date of September 20, 1940, Representative of Organization wrote to Carrier:

"We are conferring further with General Chairman Ames in regard to the question of whitewashing and when a decision has been reached in this connection you will be duly advised."

And further:

"As yet we have no comment from General Chairman, E. P. Cottrill in reply to our letter of August 2nd, addressed to the various general chairman. Upon receipt of a reply from Mr. Cottrill, you will be advised of his position in this question."

Before Organization had completed what it agreed to do and what it started to do, this claim was filed. Under these circumstances the claim is clearly premature and should be dismissed without prejudice.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That claim is prematurely brought and should be dismissed without prejudice.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1945.