Award No. 2995

Docket No. MW-2990

THIRD DIVISION

NATIONAL RAILROAD ADJUSTMENT BOARD

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that painters employed under the jurisdiction of the Station Master, Union Station, Kansas City, Missouri, shall be accorded seniority rights and their names placed on the seniority roster of employes in the Union Station Maintenance Department, listing their appropriate seniority rights as employes in that Department.

EMPLOYES' STATEMENT OF FACTS: Rules 1 and 2 of Agreement in effect between the Kansas City Terminal Railway Company and the Brotherhood of Maintenance of Way Employes, governing hours of service and working conditions of employes in the Union Station Maintenance Department, effective May 21, 1941, read:

"SCOPE

Rule 1.

These Rules shall govern the hours of service and working conditions of the Union Station Maintenance Department in the following classes:

1. Maintainers.
2. Truck Repairmen.
3. Maintainer Helpers.

CLASSIFICATION OF WORK

Rule 2.

Employes covered by Rule 1 will perform work in buildings, within areas and at locations as designated, maintaining facilities and equipment as hereinafter defined.

(a) In the Union Station and Annex Building to tunnel connection with power house west of Broadway; within the train shed and loading dock areas as used for passenger, baggage and mail handling; within Union Station Plaza area, including Grand Avenue and Broadway inclines; freight house at 20th and Oak Streets; old passenger station building at 20th and McGee Streets; Kansas City, Kansas, High Line Passenger Stations at Seventh Street and at Central Avenue.

(b) The maintenance work to be performed in buildings and within areas as covered by (a) above, consists of:

'Ligrt repairs of interior wood work, fixtures and furniture, heating, ventilation, refrigeration and air conditioning systems;

work of painting in the Scope Rule, Rule 1, and in the Classification of Work Rule, Rule 2 (a) and (b). Further along in this letter of May 8, 1944, the General Chairman makes the following statement:

> "Note the inference is very strong that at the time of framing the contract and agreeing to it, it was considered that painters performing work in the Union Station were a group and class included in the Union Station Maintenance force. If it were not so construed and considered and the Management holds they do not come in the Scope of the Union Station Maintenance Employes' contract, then the Management has violated the agreement between the Kansas City Terminal Railway Company and the Brotherhood of Maintenance of Way Employes covering Maintenance of Way workers dated November 1, 1938, in not having the painters in Group 6 of the Maintenance of Way employes perform the work of painting in the Union Station."

This part of his letter indicates that the General Chairman changed his mind in the middle of his letter, and is now claiming that the employes should be covered by another Agreement between the parties to this dispute covering Maintenance of Way employes and Flagmen, effective November 1, 1938. There is no merit in this contention, because there is no relationship between Maintenance of Way employes and Union Station Painters, as they are employed in different departments and perform entirely different work. Even the General Chairman seems to realize that this is a farfetched contention, as he goes on to say:

> "These employes are not without representation and do come **within the scope of either one agreement or the other and they should be carried on the seniority roster.** I reiterate it is our contention that these employes come under the Scope of the agreement between the Kansas City Terminal Railway Company and the Brotherhood of Maintenance of Way Employes governing hours of service and working conditions of employes in the Union Station Maintenance Department, dated May 24, 1941." (Emphasis supplied by the Carrier).

It is quite evident, from the above quotations, that the Employes are not at all sure that Union Station Painters are included in either Agreement, but they are asking this Board to have them included in either one agreement or the other.

Union Station Painters actually do not come within the Scope of either of the Agreements between the Brotherhood of Maintenance of Way Employes and the Carrier. This has resolved ,therefore, into a dispute regarding **representation** and the making of Agreements, and does not come within the jurisdiction of disputes to be handled by your Honorable Board.

The Carrier respectfully requests that the claim of the Employes be dismissed.

OPINION OF BOARD: Petitioner, Brotherhood of Maintenance of Way Employes, is a party to two representation agreements with this Carrier. One, effective November 1, 1938, relates to maintenance of way employes in the track, bridge and building and yard departments; and the other, bearing effective date of May 24, 1941, covers maintainers, truck repairmen and maintainer helpers in what is known as the Union Station Maintenance Department. We are here directly concerned with the latter Agreement.

The claim is calculated to have this Board determine that painters employed under the jurisdiction of the Carrier's Station Master, Union Station, Kansas City, shall be accorded seniority rights under the Agreement last referred to.

The Petitioner relies upon Rule 1 (Scope) and Rule 2 (Classification of Work) of what we shall refer to as the 1941 Agreement. Said rules are lengthy and it will be sufficient to say, without quoting them here, that Rule 1 merely lists "Maintainers," "Truck Repairmen" and "Maintainer Helpers" as constituting the general classes of employes within the scope of that Agreement; that Rule 2 (b) enumerates "light repairs of interior wood work, fixtures and furniture, heating, ventilation, refrigeration and air conditioning systems" as constituting

maintenance work under said Agreement; and that Rule 2 (c) specifically excepts "outside painting of buildings, train sheds and dock structures" from the scope of maintenance work covered by said Agreement.

It appears to be the Petitioner's theory that the exclusion of "outside painting" in Rule 2 (c) necessarily forces the conclusion that "light repairs of interior wood work," etc., as used in Rule 2 (b), includes interior painting, so as to bring those engaged in that work at the places designated under the 1941 Agreement.

We are unable to accept the Petitioner's argument. Rules of construction are frequently helpful in ascertaining the intent of the parties with respect to ambiguous or uncertain provisions in contracts, but such aids should be utilized with much caution when it is sought to apply them to the scope of a formal collective bargaining contract. The danger is that the agency undertaking to ascertain the intent of the parties of record under such circumstances may find itself dealing with the rights of third persons who are not parties to the contract at all. The evident purpose of Rule 2 (c) is to exempt work performed by employes covered by other agreements. This conclusion is corroborated by the fact that the 1938 Agreement, covering maintainers, repairmen and maintainer helpers, specifically mentions employes engaged in painting buildings as being within its scope. It does not logically follow, however, that because certain classes of work are exempted from the operation of the Agreement here under consideration that all other classes remotely related thereto are included.

The dangers incident to the adoption of the Petitioner's theory are well illustrated by the record before us. When the subject of this controversy was under consideration on the property, the Petitioner's General Chairman took the position, and so advised the Carrier's Superintendent, that if the employes engaged in interior painting at the Kansas City Union Station were not covered by the 1941 Agreement, they were under the 1938 Agreement covering employes in the track, bridge and building and yard departments. This suggests the possibility of a genuine jurisdictional dispute and we will not trespass into that territory under the pretext of resolving an ambiguity. The claim will, rather be denied on the basis of a failure of proof and the parties left to the remedy of negotiation.

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;

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

That the Petitioner has failed to establish its claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 29th day of November, 1945.