

Award Number 3111

Docket Number.MW-3140

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**THE DELAWARE AND HUDSON RAILROAD CORPORATION**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that Clifford Simmons, Carpenter Helper, Oneonta, New York, shall, under the application of Schedule Rule 18, be paid the difference between what he received as carpenter helper's rate of pay and that which he should have received at painter's rate of pay for fifty-two (52) hours that he was assigned to paint a water tank at Oneonta, New York, during the period August 11 to 20, 1942, inclusive.

**EMPLOYEES' STATEMENT OF FACTS:** On dates listed below Clifford Simmons, Oneonta, New York, was assigned by his foreman and engaged in paint work described:

August 11th—Painting hoops for water tank while on ground, making them ready to be placed on tank.	—4 hours
August 12th—Painting iron work on sub-structure of tank with red lead.	—8 hours
August 13th—Painting frost proof box under tank (Body and Trim).	—8 hours
August 14th—Painting hoops after they had been placed on tank.	—8 hours
August 18th—Painting hoops after they had been placed on tank.	—8 hours
August 19th—Painting face boards around tank.	—8 hours
August 20th—Painting meter box and painting frost proof box	—4 hours —4 hours

While engaged in this paint work, Clifford Simmons was paid at the rate of pay applicable to carpenter helpers.

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

**POSITION OF EMPLOYEES:** Rule 19 of Agreement, effective July 1, 1939, between The Delaware and Hudson Railroad Corporation and the Brotherhood of Maintenance of Way Employees reads:

"Rule 19. Employees assigned to higher rated positions shall receive the higher rate while so engaged; if assigned to a lower rated position their rate will not be changed."

As will be observed, Rule 19 provides that where an employee is assigned to a higher rated position, he shall receive the higher rate while so engaged. In the claim before us Clifford Simmons, Carpenter Helper, was engaged to perform paint work as described in Employees' Statement of Facts. There can be no question but that the paint work described commands the rate of pay applicable to a painter. In that Clifford Simmons was assigned by his foreman in the performance of this work, we maintain that he shall be paid at painter's rate for the number of hours he was engaged in the performance of paint work. Accordingly, we maintain that this claim is just and reasonable and respectfully request that it be allowed.

**CARRIER'S STATEMENT OF FACTS:** On dates set out in claim, Clifford Simmons was employed as Carpenter Helper in a gang under Carpenter Foreman H. I. Quackenbush. There were no painters assigned to this gang, carpenters doing the work of both carpenters and painters. Investigation during the handling of this case developed that with the exception of August 20, 1942, on which date he performed painting work, Simmons only performed helper's duties. Submitted as Exhibit "A" is copy of affidavit of Foreman Quackenbush which indicates that Simmons only worked as a painter on one of the dates concerned in this claim, i.e., August 20, 1942. Adjustment has been made so that Simmons has been allowed painter's rate for work performed on August 20, 1942.

**POSITION OF CARRIER:** Carpenter Helper Simmons was neither assigned nor performed painter's work on dates concerned with the exception of August 20, 1942. This position is supported by check of Foreman's reports of work done and affidavit of Foreman which is attached marked Exhibit "A."

The following is record of work performed by Clifford Simmons on the days in question:

August 11, 1942—Helping carpenters renewing hoops on water tank.

August 12, 1942—Helping carpenters renewing hoops on water tank.

August 13, 1942—Helping carpenters build scaffold.

August 14, 1942—Helping carpenters renewing hoops on water tank.

August 18, 1942—Helping carpenters remove old hoops.

August 19, 1942—Helping carpenters clean tank.

August 20, 1942—Painting frost proof box.

With the exception of August 20, 1942, Clifford Simmons performed no service that would entitle him to painter's rate of pay and Carrier respectfully requests that claim be denied.

**OPINION OF BOARD:** The record discloses that investigation subsequent to the presentation of this claim to the Carrier developed that painting work was performed by the claimant on one of the seven days in question, and adjustment was made by allowance of painter's rate for such work performed.

In respect to the other six days of the claim, August 11, 12, 13, 14, 18 and 19th, 1942, the parties submit conflicting testimony by employees in position to observe and know to what extent, if any, painting work was done by this claimant on one or more of these six days. Further, the descriptions and details of the work involved and of the duties and time spent in their performance on the days yet remaining in question are not sufficient to enable this Division to reconcile the facts in the case.

Such necessary determinations may be developed by the parties and should by them be undertaken and the case disposed of upon the basis of the facts thus found.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 claim is to be disposed of by the parties in accordance with the Opinion.

#### AWARD

Claim remanded to the parties for disposition in accord with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary.

Dated at Chicago, Illinois, this 31st day of January, 1946.