

Award No. 3130

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 9, 1940, inclusive, on which dates mechanical department employes performed work of painting in the roundhouse and other buildings at Alliance, Nebraska.

EMPLOYES' STATEMENT OF FACTS: See Docket No. MW-2912, Award No. 2869.

POSITION OF EMPLOYES: In Opinion in Award No. 2869, Docket No. MW-2912, your Board stated in part:

"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 . . ."

From the language in above quotation we gained the impression that your Board concluded that the claim was prematurely brought by reason of

visions of the Act, Sec. 3, First, (m), supra, bind the parties with finality, and it follows that it is unlawful to re-submit the claim in this claim in this case to the Adjustment Board, which claim is identical in all respects with the claim dismissed in Award 2869. Wherefore, it is the position of the carrier that the re-submission of the claim should not be entertained by the Adjustment Board.

OPINION OF BOARD: This case was before this Board with the same Referee, in Award 2869. Before that case reached the Board, several Shop Crafts Organizations were endeavoring to eliminate any question among themselves as to who was entitled to this work, pursuant to correspondence with Carrier. While this endeavor was still pending, the claim was processed before the Board and the Board concluded that the claim was prematurely brought under these circumstances and the case was dismissed without prejudice. That did not mean, as contended by Carrier, that the claim could not again be heard by this Board. To the contrary, it meant the very opposite. If the claim had been dismissed with prejudice, that would have ended it on the merits, but the dismissal without prejudice, as the words signify, left the Organization the right to again assert the claim after the discussion on the property between the various crafts had been completed.

Of course, the mere fact that the other crafts agree that the work does not belong to them is not proof that the Agreement has been violated. Our problem is to determine whether the Maintenance of Way employes are entitled to the painting and whitewashing work under their Agreement.

The claim in the instant case is based upon the assertion that employes in the Mechanical Department performed certain painting and whitewashing work in the Roundhouse and other buildings at Alliance, Nebraska from June 3 to 9, 1940, which under the Agreement, belonged to the painters in the Maintenance of Way Department.

Carrier contends that it has always been the practice to require employes of the Mechanical and Store Department to clean and trim up the interior of their place of work. As described by Carrier:

"The clean-up process consists of washing and white-washing the interior of roundhouses, shops and storehouses and the repainting of column posts, inside of doors and sidewalls below the windows in trimming up the job for good appearance; the painting of roundhouses and shop machinery, including washout pumps, guards and fixtures, the interior of paint storage, battery, oil storage, compressor, boiler and generator rooms including floors, the painting of movable tool-racks, storehouse racks, tables and other similar appurtenances in use in such places."

Brotherhood confines its claim to the painting of column posts, doors, walls and other parts of the building itself.

It seems clear to us that the work of painting the exterior and interior of the buildings comes within the purview of the Maintenance of Way Agreement. However, we think whitewashing is not covered by Rule 52(c). A painter is described in Rule 52(c) as one who is "skilled in and assigned to the mixing, blending or applying paint either by brush or spray." We are of the opinion that under this definition, we cannot include whitewashing without writing something into the Agreement by interpretation.

The claim should be allowed therefore for any painting work done between June 3 and 9, 1940 on the building or any part thereof, but not for the whitewashing work.

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 Employe 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 Carrier violated the Agreement in respect to the painting work done by Mechanical Department employes from June 3 to 9, 1940 at Alliance, Nebraska on the buildings or any part thereof, but not as to whitewashing.

AWARD

Claim sustained in accordance with Opinion and Findings and referred back to property for computation in accordance with this Award.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. R. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of March, 1946.