

Award No. 4798

Docket No. MW-4741

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DELAWARE AND HUDSON RAILROAD CORPORATION**

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

(1) That the Carrier violated the Agreement dated November 15, 1943 when on July 1, 1948, and subsequent thereto it assigned the lampman at Oneonta, New York, the work of painting switch targets and failed to compensate him at Painter's rate of pay;

(2) That the lampman who performed this work be allowed the difference in pay between what he did receive at the lampman's rate and what he should have received at the painter's rate;

(3) That the Senior Painter employed on the Susquehanna Division be allowed straight time pay for the same number of hours consumed by a lampman painting switch targets during the period referred to in part 1 of this claim.

EMPLOYEES' STATEMENT OF FACTS: Subsequent to July 1, 1948, the Lampman assigned to the care of switch lights at Oneonta, New York, was instructed to paint switch targets in addition to his regular duties.

For such services this Lampman was paid only at the Lampman's rate of pay.

The Employes have claimed that the Lampman should have been paid at the Painter's rate while performing this work. And, also, that the senior painter on the Susquehanna Division should have been allowed pay for the same number of hours as was consumed by the Lampman in performing this painting work.

The Carrier has declined the claim.

The Agreement between the parties to the dispute dated November 15, 1943 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 36, Rates of Pay, of the effective agreement list the position of Painter as a position of higher rate than that of Lampman. While the Lampman was painting switch targets he was obviously performing work of the class of painters.

Rule 18 of the effective Agreement states as follows:

"Employes 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."

men paint switch stands, targets, etc. Section Foremen are in the habit of carrying paints of required color for this work.

PENNSYLVANIA DIVISION: Trackmen have been doing switch-target painting. It is not known definitely that lampmen have done this work. The section foremen carry paint of the required color and apply as needed.

POSITION OF CARRIER: That the duties of the lampman at Oneonta have not changed, insofar as requiring him to paint switch-targets is concerned, in over twenty-five years, and there has been no such rate of pay allowed or ever requested before, it is our belief that the lampman or section-man, by the nature of his work and the frequency with which he is occupied in the vicinity of switch-targets, is the employe most suited to perform the service. Painters have never been assigned to this service.

OPINION OF BOARD: On July 1, 1948, the lampman at Oneonta, New York, was instructed to paint switch targets. Employes claim that he should have been paid at the painter's rate while engaged in that work and that the senior painter on the division should be allowed straight time pay for the hours consumed by the lampman in painting the switch targets.

It is the contention of the Employes that the position of "Painter" is listed in the Agreement by title only, and obviously since there is no description of the duties of painter setting forth any exception, all painting on the property accrues to the holder of such position.

Carrier contends that it has been the practice on this property for twenty-five years for lampmen and section men to do this type of work. That it was done before its first Agreement with Maintenance of Way Employes in 1939 and has continued through the negotiation of the current Agreement of November 15, 1943. That at no time until this present claim was filed did the Employes protest this practice.

The amount of time required to paint a switch target does not exceed fifteen minutes. True, if all of such switch targets were painted at one time, there would be a fairly large amount of painting work to do. The record reveals that on this property painters have never been used to perform this type of work. The practice of having lampmen or section men paint switch targets has been so much a part of their normal duties that different colors of paint and enamel have always been a part of their equipment and applied when necessary. The work involved clearly does not require the services of a skilled painter. It is a logical incident of the work of the lampman or section man. The duties of all positions even when classified and described cannot be set up in each craft with mathematical accuracy. Some minor elements of the work which constitutes the predominating duties of a particular craft are a necessary or logical incident to the work of another. Thus carpenters aren't the only class of employe on the property to use a hammer, section laborers aren't the only class to use a pick and shovel, and painters aren't the only class to use a paint brush. This practice therefore, of using lampmen or section men for this extremely minor painting work which is logically incidental to the performance of other duties of their positions cannot be held to be in conflict with the clear terms of the Agreement. Where a contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are enforceable to the same extent as the provisions of the contract itself (see Award 2436 and Awards cited therein).

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of March, 1950.