

Award No. 5597
Docket No. MW-5869

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE NEW YORK CENTRAL RAILROAD COMPANY
ATTORNEY DAVID I. ASHE AS REPRESENTATIVE
OF CERTAIN INDIVIDUALS**

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

(1) The Claim of the following listed Maintenance of Way Department painters at the Grand Central Terminal in New York City, involving their seniority status is without merit;

Stanley D. Moran
Arthur Schlichtes
Sylvio Gandini
William Daniels
John Naldy
Joseph Reilly
Richard Stachnik
George Lasting
Peter Keartz
Louis Csorba
James Barklow

John Tamm
Karl Akerberg
Charles Liebezeit
John B. Knab
Frank Osterelich
Joe Socolich
Charles Hoffman
Martin Jacobsen
Christian Beringer
Edward Hansen

(2) The Memorandum of Agreement effective August 19, 1948 applicable to these employees, was properly negotiated under the provisions of Section 2, First, Second, Third of the Railway Labor Act;

(3) The Memorandum of Agreement effective August 19, 1948 applicable to these employees, has been properly applied subsequent to the date of consummation;

(4) There has been no violation of the effective agreement in this instance.

SUBMISSION OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BROTHERHOOD'S STATEMENT OF FACTS: The employees involved in this dispute are a group of Painters employed in and about the Grand Central Terminal. The status of these employees as members of the craft or class of Maintenance of Way employees, and the right of the Brotherhood

World War represented "painters engaged in work incidental to the maintenance of bridges and buildings". By what authority is it claimed that the organization represented these inside painters? Did they ever vote for such representation pursuant to the provisions of the Railway Labor Act? The fact is that the Brotherhood of Maintenance of Way Employees may have represented the outside painters, but they were never authorized to represent the inside painters, or to do any bargaining on their behalf.

Nor is it true, as further stated at page 7 of the Carrier's submission, that the Brotherhood of Railway Carmen represented the inside painters until 1948. As for the alleged agreement entered into on May 6, 1948, between the two labor organizations, that might be binding as a settlement of jurisdictional rights between the two organizations, but it cannot bind the employees without their consultation and consent. The inside painters have the right under the Railway Labor Act to select their own bargaining representative. The two Brotherhoods cannot, by an agreement, decide it for the employees.

3. The Carrier argues, at page 8 of its submission, that this Board does not have jurisdiction to resolve the question of representation. The claimants are not seeking to have it resolved in this proceeding and that is not the question presented here. It is the Carrier and the Brotherhood of Maintenance of Way Employees who argue here that the Brotherhood does represent these employees. It is for them, therefore, to show that the Brotherhood does in fact represent the inside painters, in accordance with the provisions of the Act. This Board does not have jurisdiction to resolve a question of representation, but, in passing on the issues involved here, it does have the power to demand proof of the Brotherhood that its claim of representation is valid. No such proof has been submitted, and none can be.

4. The Carrier argues further, at page 8 of its submission, that seniority rights arise only by contract of the parties. The fact is that such contracts existed between the Carrier and each of the inside painters. For even though these employees were not covered by any collective agreement, they were hired by the Carrier on the basis of an announced policy of the Carrier that it maintained a seniority roster for these painters, and such announced policy became part of the contract of hiring. These contracts the Carrier has violated by depriving these employees of their seniority rights.

In conclusion, we request once more that an oral hearing on this matter be held before this Board in New York City, so that the claimants and their counsel may present all of the facts fully to the Board.

Respectfully submitted

ASHE & RIFKIN

Attorneys for Claimants
305 Broadway
New York 7, N. Y.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim was presented to the Board by the Brotherhood of Maintenance of Way Employees because certain individual employees of the Carrier contended that their seniority rights have been adversely affected by a certain agreement entered into between the representatives of the Carrier and the representatives of the Brotherhood of

Maintenance of Way Employees. The agreement in question was dated August 19, 1948 and provided for the making of a seniority roster to be maintained for all painters employed at the Grand Central Terminal in New York. The manner in which this roster should be made up was specifically provided for in the expressed provisions of this referred to agreement.

The Brotherhood and the Carrier allege that this agreement provided for the assignment of seniority dates in a manner which reflected the work opportunity of the various employees named thereon, as between so-called "inside painters" and "outside painters". The individual employees represented by Attorney David I. Ashe contend that the agreement in question did not result in seniority datings which were fair or equitable to them and that they suffered a wrongful and improper loss of seniority in relation to other employees on the referred to roster.

It is not the function of this Board to inquire into the reasonableness of a collective bargaining agreement. We cannot go behind a contract and investigate whether or not it was a wise, prudent, or equitable agreement. Under the Railway Labor Act it is for the parties to "make and maintain agreements". Our authority is limited to finding whether a lawful agreement exists and if so, then in determining whether the parties have properly applied that agreement. As we said in Award 5517,

"* * * this Board does not have plenary equitable jurisdiction. We have authority only to interpret, apply and enforce the agreed upon rules and once interpreted, we can only apply and enforce them accordingly until changed."

In the instant case there is no dispute but that the agreement in question was entered into by these parties in their respective representative capacities, in due course, as contemplated by the Railway Labor Act. It is evident that the seniority roster posted on September 8, 1948, was published in full accordance with the provisions of this agreement. This being so the decision of this Board must necessarily be that there has been no violation of the agreement and that the position of the individual employees in this case has no merit.

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 Employees involved in this dispute are respectively Carrier and Employees 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 of the Brotherhood of Maintenance of Way Employees that:

(1) The Claim of the following listed Maintenance of Way Department painters at the Grand Central Terminal in New York City, involving their seniority status is without merit;

Stanley D. Moran
Arthur Schlichtes
Sylvio Gandini
William Daniels
John Naldy
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(2) The Memorandum of Agreement effective August 19, 1948 applicable to these employes was properly negotiated under the provisions of Section 2, First, Second, Third of the Railway Labor Act;

(3) The Memorandum of Agreement effective August 19, 1948 applicable to these employes, has been properly applied subsequent to the date of consummation;

(4) There has been no violation of the effective agreement in this instance.

is sustained.

AWARD

Claim of the Brotherhood is sustained and the claim of the individual employes represented by Attorney David I. Ashe is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of December, 1951.