

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) That the Carrier violated the effective agreement when they assigned employes holding no seniority in the Painter's class to perform painting work at the Alliance Depot on August 2, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22 and 23, 1950;

(2) That Painter J. E. Bengston be compensated at his respective straight time rate of pay for a total of 60 hours and Painter L. Grauf be compensated at his respective straight time rate of pay for a total of 20 hours because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Bridge and Building Mechanic H. W. McDonald was assigned to perform painting work on the Carrier's Alliance Depot on August 2, 21, 22 and 23, 1950. Except for the replacement of four window panes (24" x 26"), eight hours were consumed on each of the dates listed in performing painting work and in replacing loose and missing putty as is customarily done when painting window sashes.

Bridge and Building Helper S. McCauley performed painting work at the Carrier's Alliance Depot for eight hours on each date of August 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1950 and replaced loose and missing putty as is customary when painting window sashes.

Although painting work was performed by Bridge and Building Helper McCauley on August 3, 1950, no claim is herein made for work performed that date due to an inadvertent omission of said date in the claim as originally presented to the Carrier.

Claim was filed in behalf of Painters L. Grauf and J. E. Bengston, that they be paid at their respective straight time rates of pay for an equal proportionate share of the total man-hours consumed by the employes other than painters, in performing painting work on each day listed in part (1) of the Statement of Claim.

The number of hours claimed in behalf of claimant L. Grauf was subsequently reduced to twenty hours after it was learned that he was off duty

right of B&B employes to perform this protective painting cannot be questioned in view of the clear and unambiguous language used by the General Chairman in his letter of March 24, 1949 (Carrier's Exhibit 3 (a)).

In conclusion the Carrier affirmatively asserts that (1) The only painting performed by other than painters at the Alliance Depot on the dates specified in the claim, was the application of a prime coat of paint to the new material used in the repair work; (2) Such application of a prime coat of paint to new material used in repair work is work belonging to B&B employes as agreed upon between the Carrier and the Petitioner in the exchange of correspondence attached hereto and identified as Carrier's Exhibits 3 (a) and 3 (b).

In the light of the foregoing, the Carrier respectfully submits that the painting performed by B&B employes, as described herein, was not in violation of any schedule rule or ruling, but on the contrary, was in strict accord with the agreed upon practice that has been in effect for many years, which practice is confirmed by Carrier's Exhibits 3 (a) and 3 (b). The Carrier further asserts that the claim herein under discussion is totally lacking in support, contractually or otherwise, and must in all things be denied.

The Carrier affirmatively asserts that all of the data herein and herewith submitted has been previously submitted to the employes.

(Exhibits not reproduced).

OPINION OF BOARD: This claim arises out of the contention that on August 2, 21, 22 and 23, 1950, Carrier had B&B Mechanic H. W. McDonald perform work of painting on the depot at Alliance, Nebraska, in violation of the rules of its Agreement with the Brotherhood. The same contention is made as to the work performed by B&B Helper S. McCauley on August 4, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18, 1950. Based on this alleged violation it asks that Painter J. E. Bengston be compensated at his respective rate of pay for 60 hours at straight time and that Painter L. Grauf be compensated on the same basis for 20 hours.

Rule 2, Sub-Department b. Bridge and Building places painters in Seniority Group 3, whereas the same places B&B Division Gang Mechanics and Helpers in Group 4. Rule 5 (a), as far as here material, provides "Seniority rights of all employes shall be confined to the group of the sub-department in which employed, and to the territory of one Operating Division, . . ." Claimants had seniority as painters on Carrier's Lines West of the Missouri River. See Rule 5 (f).

Rule 50 (c) defines a Painter as "An employe skilled in and assigned to the mixing, blending or applying paint either by brush or spray, . . ."

Under these rules it was not permissible for Carrier to have either a B&B Mechanic or Helper do painting without violating its Agreement with the Brotherhood unless what they did came within an agreed exception which permitted B&B employes to apply a prime coat of paint to new material used in repair work.

The burden of establishing facts sufficient to authorize the allowance of a claim is upon the party seeking its allowance.

We think the record shows that the work performed by McDonald on the days for which claim is here made is best evidenced by his time slips. These show that on August 2, 1950, he worked eight (8) hours repairing stock yards, on August 21, 1950, eight hours repairing water crane, on August 22, 1950, eight hours repairing passenger depot and on August 23, 1950, eight hours setting glass in depot windows. None of this work is painting and so no violation resulted therefrom.

As to the work performed by McCauley his signed statement of October 14, 1950, sets out that he was painting on the depot at Alliance for eight (8) hours on each of the twelve days therein set out, which are the dates for which claim is made. It is true that on April 18, 1952, McCauley subscribed, under oath, a statement to the effect that his signature thereto could not be genuine. A careful examination of his signature to the two instruments convinces us he is mistaken and that, in fact, he signed it. It is significant that in the statement of April 18, 1952, McCauley does claim the facts contained in his statement of October 14, 1950, are false. When these facts are considered with the statement of Dan Hendrix, Paint Foreman, dated May 22, 1952, who was in charge of Paint Gang No. 2 that, in January 1951, went to Alliance and completed the job of painting the depot, we find the claim that McCauley did painting on the depot at Alliance on the dates set out in the claim is fully established. The Paint Foreman states he found all the doors and windows on the ground floor, together with the porches, painted and that there had been no new sash or frames which had been primed. In other words, the work done did not come within the agreed exception.

It appears that McCauley worked a total of eleven days of eight (8) hours each, or 88 hours. The total claimed is for 80 hours and, being within the amount of work which Carrier removed from the employees entitled thereto, should be allowed.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1953.