

Award No. 7036

Docket No. MW-6973

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO GREAT WESTERN RAILWAY COMPANY

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

(1) The Carrier violated the Agreement on February 25 and 26, 1952, when it failed to assign the work of painting the Engineer's Washroom at Chicago, Illinois to Paint Gang employees and in lieu thereof, assigned the work to a traveling carpenter;

(2) Painter Foreman F. Gamrow and each of the employees assigned to his Gang on the dates herein involved be allowed pay at their respective straight time rates for an equal proportionate share of the total man hours consumed by the traveling carpenter in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On February 25 and 26, 1952, the Carrier's Bridge and Building Supervisor, Mr. L. Draper, assigned Traveling Carpenter Dempsey to perform the work of painting a building, identified as the Engineer's Washroom, located in the Carrier's Chicago Transfer Yard, Chicago, Illinois.

Traveling Carpenter Dempsey, while so assigned, consumed a total of sixteen (16) hours in performance of the above referred to work.

The System Paint Gang, under the supervision of Painter Foreman F. Gamrow, was available and could have performed the work herein involved had the Carrier so desired.

Traveling Carpenters and painters are in separate seniority groups within the Bridge and Building Department and are carried on separate seniority rosters.

A claim was filed in behalf of Painter Foreman F. Gamrow and each of the Employees assigned to his gang requesting that they be allowed pay at their respective straight time rates for an equal proportionate share of the total man hours consumed by the Traveling Carpenter because of this improper work assignment.

Claim was declined as well as all subsequent appeals.

rule were ambiguous the practice followed by the parties over a considerable period of time under the Composite Service Rule is evidence of their intent. That principle is so well established on all four divisions of the National Railroad Adjustment Board that specific citations in support thereof are unnecessary.

In view of the foregoing, claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier asserts that its records show that no painting was performed by the traveling carpenter on the dates mentioned in the claim. However, it appears that such issue was not raised on the property where it could readily be resolved. It also asserts that the painting he did perform (allegedly on the 27th) was incidental to the carpentry involved in making some alterations. However, it is shown that a large quantity of paint was used and applied with a spray gun. Those and other circumstances lead us to conclude that such work was not simply incidental to the remodeling but was a painting project which under the seniority rules should have been assigned to a painter.

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

The Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1955.