

Award No. 7303
Docket No. MW-7067

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: (1) The Carrier violated the Agreement when it assigned track forces to paint switch targets between Green Bay and Crivitz, Wisconsin, instead of assigning the work to B. & B. forces;

(2) B. & B. employe Leo Szymonish be allowed twenty-two (22) hours' pay at his straight-time rate of pay account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The Carrier assigned track forces to paint switch targets between Green Bay and Crivitz, Wisconsin, who consumed approximately twenty-two (22) hours in the performance of such work.

The painting work involves the use of three different colors of paint. The switch stand proper is painted with black paint; red and white stripes are painted on the blades of each switch stand.

The painting of switch stands and targets has heretofore been recognized as B. & B. work and assigned to B. & B. forces as may be substantiated by a review of this Carrier's statement of record in Docket MW-4463.

The instant claim was filed and progressed in the usual manner on the property; the Carrier declining the claim in each stage of handling.

The Agreement between the two parties to this dispute dated Sept. 1, 1949, together with supplements, amendments and interpretations thereto are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: The parties are now in disagreement as to what classes of employes painting work on switch targets may be properly assigned to under the provisions of the effective Agreement. The employes contend that painting work belongs to employes holding seniority in the Bridge and Building Sub-department, while the Carrier contends that it may be properly assigned to employes in the Track Sub-department.

Rule 1 of the effective Agreement is captioned "Scope" and reads as follows:

within a reasonable distance by engine crews must be corrected and such a condition could not be deferred awaiting the service of a "programmed" B&B paint crew, which ordinarily would be at intervals of six years more or less.

There is attached as Carrier's Exhibit "J" a blueprint representing a six-mile portion of Section 114 located between Mile Posts 234 and 240 of the Milwaukee Division, Second District. This is one of the four sections on which the painting of switch targets in June and July 1952 resulted in the instant dispute and is typical of the balance of the territory included in the four sections. Each sign normally painted by B&B forces is indicated in yellow color on the print. Many of these signs have letters or numerals and require some degree of skill. They are far more numerous, and not subject to damage or the necessity for frequent repainting, than the track items. The track items are indicated in red color on the print and the painting of these items, which normally has been done by track forces, requires little skill.

Many switch targets are of two solid colors; others generally consist of three red and two white stripes. It will be noted that on the six-mile portion of Section 114, shown on the print, there are 37 signs which are normally painted by B&B paint crews. In that same six-mile portion it will be noted there are only nine switch targets and five derails, which are normally painted by track department forces and were so painted in this case. They were repainted because they did not show a clear indication.

A sustaining award in this case would have the effect of:

(1) Changing the practice that has existed on this property for many years whereby members of section crews have repainted switch targets as often as needed for the purpose of maintaining them in condition to show clearly the proper indication for the safe movement of trains.

(2) Unnecessarily and unsafely delaying the repainting of switch targets when they are in need of repainting because of deterioration due to the weather or after they are damaged and repaired, because under a sustaining award it would be necessary to defer such work until it would be reasonably possible to send B&B employees to the location merely for the repainting of one or a few switch targets.

We feel that such a result would be impractical and in view of the fact that the work in this case was handled in accordance with long established practice, we maintain there is no basis for the claim and respectfully request that it be denied.

All data contained herein has been submitted to the employees.

(Exhibits not reproduced)

OPINION OF BOARD: The Carrier assigned track forces to paint switch targets between Green Bay and Crivitz, Wisconsin, a fifty mile portion of its Superior Division, on four different occasions during 1952. This involved twenty-two hours' pay which Bridge and Building employe Leo Szymonish is claiming at the straight-time rate. We are asked to determine whether the painting of switch targets is incidental to the work of the track forces and may be properly performed by them, or whether under the provisions of the parties' Agreement such painting is reserved to the painters in the Bridge and Building Sub-department.

The preponderance of evidence before us indicates that an employe assigned to cleaning or preparing incidental to mixing, blending, sizing and applying paint, calcimine or other wood preservatives either by brush, spray or other methods, or glazing, will be designated as a painter. Rule 46 (e). The Painter Foreman and his force are a part of the Bridge and Building Sub-

department, according to the provisions of Rule 4, which specifies department limits. And our attention is called to this Carrier's Statement of Facts in a previous docket before this Board. In Award No. 4488 we were told that,

"Roadway Signs and Switch Targets on this property are repainted about every two years. It has been the policy on most of the Carrier's operating divisions to assign two men to carry out this work; advertising two sign painting positions as 'Painters' to employes in the Bridge & Building seniority district. * * *"

Further, in the statement of the Carrier's position in Award No. 4488 the above statement was repeated and the following pertinent sentences were added:

"* * * In the event there are no bidders from the Bridge & Building seniority district the two painter positions are then advertised to employes in the Track seniority district. Such practice has been followed for at least the past twenty-five years." (Emphasis added).

In view of the record it is difficult for us to reach any other conclusion than that the painting of both road signs and switch targets has been the work of the painters in the Bridge and Building Sub-department. While the Carrier may have, on occasions, required members of the Track crews to perform this work, under the terms of the Agreement we must conclude that painting switch targets is work reserved to the painters of the Bridge and Building Sub-department. The claim must be sustained.

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 Agreement was violated.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April, 1956.