

Award No. 10704

Docket No. MW-9826

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when, during the period from July 16 through July 27, 1956, it assigned Bridge and Building Helper C. M. Horton, Jr. to perform B&B Mechanic's (painter's) work and failed and refused to compensate him at the B&B Mechanic's rate of pay.

(2) B&B Helper C. M. Horton be allowed the difference between what he received at the B&B Helper's rate and what he should have received at the B&B Mechanic's rate of pay account of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Mr. C. M. Horton, Jr., was regularly assigned to the position of B&B Helper on Bridge and Building Gang No. 1, under the supervision of B&B Foreman F. M. Cottingham.

On July 16, 1956, the claimant addressed and forwarded a joint letter to Superintendent D. T. Barksdale and Division Engineer W. Rambo which reads as follows:

"Riverton, La.

Mr. D. T. Barksdale
Mr. W. Rambo
Mr. G. P. Walker

Monroe, Louisiana

Gentlemen:

Please be referred to Page 3 Item A of the Agreement dated June 1, 1951 which classes Carpenters and Painters in the same classification as mechanics.

We think it would be a handicap upon Carrier and Employees alike if it should be held that a helper could never do anything a mechanic does. How could helpers be developed into mechanics if they could never do any mechanic work? Again, we must say we are aware that this claimant had already developed into a mechanic; but our concern is in connection with use of helpers who have not yet become mechanics and the utilization of the time of all employees in the gang in an efficient manner.

The Employees cite Third Division Awards 4536 and 6169. The Carrier gave its position concerning these Awards in the 5th, 6th and 7th paragraphs of its letter of November 5, 1956, Carrier's Exhibit "D" and the attention of the members of the Board is directed thereto.

Attention is also directed to Award 4798 denying a claim of section laborer for painter's rate for painting switch targets, wherein it is said:

"Thus carpenters aren't the only class of employees 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."

See also Award 4804.

There is no Agreement or authority for the payment of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: It is maintained that the Carrier assigned Claimant B&B Helper Horton to the work of operating a paint spray gun during the painting of steel bridge #5281, located on the Louisiana Division; that Claimant continued the assignment from July 16 through July 27, 1956, accumulating a total of 50 hours; Claimant contends that the work he was assigned to was classified as that of Mechanics (carpenters and painters) which provided a higher rate of pay than that provided for the classification of helper.

It is the Carrier's position that the application of paint was not the exclusive work of B&B Mechanics under the Agreement and that the work in question was performed in the usual and customary manner; that there is nothing in the Scope Rule which would prohibit B&B Helpers from using a spray gun; that the Scope Rule contains a classification of helpers as well as painters and does not contain any prescription of work allocated to either classification.

B&B Helper Horton contends, that at the time the painting was being done, he was not used in the capacity of a helper under the Scope Rule but that he was being used as a Mechanic (painter); that he was all by himself on a scaffold, apart from other Mechanics, doing the actual work of a painter and was not doing the work under the supervision of any other Mechanic. It appears further from the record that Horton is an experienced Mechanic working as a helper due to the exercise of seniority. It is also Horton's claim that he had worked for a year prior to July 16, 1956, as a helper and had not been asked to do any painting up to that time by his Supervisor. It may be assumed that this **claim** contention of Horton's was brought to the attention of the Carrier because in a letter to the General Chairman dated December 19, 1956, it was indicated additional information had been brought to the attention of the Director of Personnel.

The following rules in the Agreement effective August 1, 1950, are involved in this controversy.

"SCOPE: These rules govern the hours of service and working conditions of all employes herein named in the Maintenance of Way Department and sub-departments thereof (not including supervisory forces above the rank of foreman) as follows:

(a) Bridge and Building Department:

Foremen

Assistant Foremen

Motor Car Operators in B. & B. Gangs

Water Service Foremen, Assistant Foremen, Repairmen,
Helpers, Laborers and Pumpers

Motor Car Repairmen and Helpers

Mechanics (**carpenters and painters**), helpers and
laborers." (Emphasis ours.)

* * * * *

"COMPOSITE SERVICE: Rule 28. An employe assigned to work on a higher rated position thirty (30) minutes or more, but less than one (1) hour, will be allowed the higher rate for the full hour, and thereafter will be paid the higher rate on the minute basis for the full time worked on the higher rated position."

In the instant Scope Rule we find the following — **Mechanics (carpenters and painters)** helpers and laborers. (We are not concerned here with the Scope rules of any other crafts nor general practices as to painting elsewhere). In interpreting this Scope Rule we must give to the language used its generally accepted meaning. In the Scope Rule, herein, in a description of the position we must conclude that a Mechanic is in part a painter. Webster's New World Dictionary has defined a painter as "a person whose work is covering surfaces or walls, with paint." In the same dictionary, in so far as its application to the use of the word "helper" in this particular Scope Rule is concerned, a helper is described as "a person or thing that helps," and "helping" as a "giving of aid, assisting." "Help," as must be applicable here, is defined as, to "aid, assist; specifically to do part of the work." The word "assist" having been used both in the definition of "help" and "helping" is described as "implying a subordinate role in the helper."

Common sense would dictate that there must be some line of demarcation between the duties of a Mechanic and those of a helper. It cannot be that such duties are interchangeable.

There can be no question in interpreting the instant Scope Rule but that the work of a painter was assigned to a Mechanic. It was B&B Helper Horton's responsibility, as a helper, to assist a Mechanic and he might have to at times use a brush or spray gun. However, if he was assigned, exclusively, to the duties of a higher rated position for thirty minutes or more, he was entitled to a higher rate of pay for the full time worked on the higher rated position.

The record indicates that B&B Helper Horton was actually engaged in the act of painting for 50 hours which is not denied; that while he was doing

this work he was away from the others on a scaffold by himself which is but inferentially denied. Under all the circumstances here, we must conclude that he was actually engaged in the work of a Mechanic, not a Helper. For the foregoing reasons and in compliance with Rule 28, we find the claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds;

That the parties waived oral hearing;

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 Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 20th day of July 1962.

CARRIER MEMBERS' DISSENT TO AWARD 10704, DOCKET MW-9826

The record does not support the conclusion of the majority that the Claimant worked away from other mechanics and by himself during the 50 hours that he was applying paint with a spray gun; therefore, by the reasoning of the majority, as well as the reasoning in our prior awards, the claim should have been denied. See **Award 6190** (Wenke).

/s/ G. L. Naylor
G. L. Naylor

/s/ O. B. Sayers
O. B. Sayers

/s/ R. E. Black
R. E. Black

/s/ R. A. DeRossett
R. A. DeRossett

/s/ W. F. Euker
W. F. Euker