

Award No. 11702

Docket No. MW-11032

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when it established a paint gang, consisting of two painters and a painter foreman on its Mississippi Division and failed and refused to bulletin the position of Painter Foreman on that gang;

(2) In consequence thereof, the Carrier now be required to reimburse Painter O. M. Adams for the difference between what he earned as a painter and what he would have earned as a painter foreman retroactive sixty days from September 4, 1957 and to continue until the violation referred to in Part (1) is corrected.

**EMPLOYES' STATEMENT OF FACTS:** Both prior and subsequent to July 5, 1957, the Carrier maintained two separate and distinct paint gangs on its Mississippi Division.

One gang, consisting of five painters, among them was Claimant Adams, was under the supervision and direction of Foreman W. D. Harvey and was assigned to perform the necessary painting work on the Fulton and Cairo Districts of the Mississippi Division.

The other gang consisted of two painters, under the direction and supervision of Painter H. B. Powell, and was assigned to perform the necessary painting work on the Water Valley and Birmingham Districts of the Mississippi Division.

Both gangs were headquartered in outfit cars and were each furnished a motor car and the necessary equipment and supplies to perform their work.

Claimant Adams holds more seniority as a painter than does either Mr. Powell or the two painters working under his supervision and direction.

Foreman Harvey's gang is assigned an accounting number of 303, whereas the gang under the supervision and direction of Mr. Powell was assigned an accounting number of 305.

foreman retroactive sixty days from September 4, 1957 and to continue until the violation referred to in Part (1) is corrected."

is entirely without support as Claimant O. M. Adams had no contractual right to exercise his seniority to a position of foreman unless Carrier determined such position was necessary, and issued a bulletin advertising the vacancy. There was no vacancy existing at the time this dispute arose and consequently no basis for the Claimant to assert his seniority.

It is the duty of this Board to interpret the rules of the agreement as they are made. It is not authorized to read into a rule that which is not contained, or by an award, add or detract a meaning to the agreement which was clearly not the intention of the parties (Award 6365, Third Division).

There is absolutely no merit to the Employees' request before the Board as Carrier did not establish a paint gang consisting of two painters and a painter foreman, and this claim must be denied in its entirety.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

**OPINION OF BOARD:** This dispute developed in September, 1957, when Carrier assigned three painters as a group to perform painting jobs at different locations on the Mississippi Division. For many years Carrier maintained a paint gang including a foreman on this division. From the assignment of these three painters arise the questions of whether a new gang of painters was created and whether one of the members of this group of employees performed duties of a foreman without receiving compensation for that job classification.

Carrier claims that the three painters did not constitute a new gang, that they continued to be under the supervision of the duly classified foreman Harvey, that for many years it was the practice of Carrier to send out one or more of the group to work on small, routine jobs, and that Claimant, H. B. Powell, did not merit the designation of foreman because he was not requested to assume such duties nor did he engage in work of a supervisory nature. Petitioner asserts that a new gang in fact was created, that it had a separate account number, that it received separate instructions from the Bridge and Building supervisor, and that Mr. Powell performed foreman's duties corresponding to those of the regular foreman, Mr. Harvey. He further argues that Carrier violated the Agreement when it failed to bulletin the position of foreman as designated in the Scope Rule.

We proceed first to consider the question of whether a new gang of painters was created. The use of painters from the regular gang to perform detached service does not automatically mean that a new gang of painters is created. We reject Claimant's contention that an account number gives the group individual identity as a new gang. This device is used for administrative and bookkeeping purposes. It is conceivable that because of the size and varying demands of paint jobs from time to time members of the gang would be separated, but such detachment does not result in formation of a new gang necessitating a foreman.

We next examine the second question, whether Mr. Powell performed duties as a foreman. No doubt, Mr. Powell did get some instructions from the supervisor, but he had not clearly demonstrated that his role was that of a foreman. When one or more painters are assigned a detached job and

when one of these employes in the course of the work receives instructions, it cannot be assumed that the painter has become a supervisor and should receive foreman's compensation. Carrier did not appoint Claimant as a foreman, and we are not persuaded that Mr. Powell did in fact function in this capacity. We believe that this three man crew of the gang operating independently worked without immediate supervision of a foreman. Consequently, we find that the Carrier did not violate the agreement.

**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 Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 9th day of August 1963.