

Award No. 11956
Docket No. MW-11332

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

(1) The Carrier violated the effective Agreement when, from March 12 through March 19, 1959, it used Bridge and Building Carpenters and helpers who hold no seniority in the class of painters, to perform painting work on the Eye Street Drawbridge at Sacramento, California, instead of using employees holding seniority in the class of painters.

(2) Painter Foreman Page Rodems and Painters Thomas E. Hunter, Louis Arelllo, Woodrow P. Howe, Nils L. Parsons, Hubert B. Wilson, Jack A. Price, George W. McClendon, William B. Roy, L. E. Mowry and Victor L. Vesely each be allowed pay at their respective straight time rate for an equal proportionate share of the total man-hours consumed by the Bridge and Building carpenters and helpers in performing the painting work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimant Painter Foreman and Painters have established and hold seniority as such on the Carrier's Sacramento Division.

During the period from March 12 through March 19, 1958, the Carrier assigned and used Bridge and Building Carpenters and Helpers assigned to B&B Gang Number 3, who hold no seniority rights in the class of painters, to use painter's equipment in performing painting of fire proofing on the ties in the east bound track on the Eye Street Drawbridge at Sacramento, California.

The work consisted of applying primer and zone with four knot brushes on the structure in question.

"Seniority rights of all employes are confined to the sub-department in which employed."

Both B&B carpenters and helpers and B&B painters and helpers are in the same sub-department. This Board, in *BofMWE v. SP*, Award 6705, ruled that the Scope Rule and Rule 4 are not involved in a case where two different classes in the same sub-department claim work. That Award states in part:

"Hence the classifications in themselves, and the Memorandum of Agreement which brought them into being, gave no rights to insist upon any certain composite in forces and the Carrier's right to arrange its forces and determine what supervision was necessary, continued unimpaired."

Rule 27 is not involved as no new positions were created, nor should any have been created.

It will be observed that from an agreement standpoint, carrier was fully within its rights in using employes of B&B Sub-department as was done in this case.

Not only was Carrier fully within its rights under provisions of Rules 1, 3 and 4, but practice followed in this case conforms to practice followed in the past, as has been indicated above.

CONCLUSION

Carrier requests that the claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Incident to replacing ties, carpenters and helpers of the Bridge and Building Sub-department "fire proofed" the ties. The "fire proofing" consisted of brushing the ties with a product of asphalt-like consistency, and applying rock chips to such adhesive substance.

The ultimate question is whether the Agreement reserves to the painter class in the Bridge and Building Sub-department a right to do such work exclusive of the carpenter and helper class in the same Sub-department.

Letters included in Employees' Ex Parte Submission, dated after Carrier's final denial of the claim, could not have been made a part of the dispute while the claim was being handled on the property. Such letters are excluded from our consideration. See Circular No. 1 of this Board and Award No. 11128 (Boyd). Letters attached to Carrier's Ex Parte Submission are excluded from our consideration upon the same grounds.

The work of painters and carpenters is not defined in the Agreement; neither is work assignable to the two classes made mutually exclusive. Where a class claims the benefit of the exclusive right to certain work, and such benefit is not expressly conferred by the Agreement, that class has the **burden**

of showing that it has the exclusive right by custom, tradition and practice on the property. Employees have not sustained the burden of proof in this case. Award No. 11129 (Boyd).

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.