

Award No. 11957
Docket No. MW-11333

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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, during the period from June 6 to 20, 1958, it assigned and used Bridge and Building carpenters and helpers, who hold no seniority rights in the class of painters, to perform painting of fire proofing on Structure 108.22 at Andora, instead of using employees holding seniority within the class of painters.

(2) Painters Louis Arelllo, Woodrow P. Howe, Nils L. Parsons, Hubert B. Wilson, Jack A. Price, Kenneth Lewis, W. B. Roy, L. E. Mowry, Victor L. Vesely and J. E. Johnson each be allowed sixteen (16) hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The Claimants have established and hold seniority as a painter on the Carrier's Sacramento Division.

Between the dates of June 6 and 20, 1958, the Carrier assigned and used Bridge and Building carpenters and helpers on B&B Gang Number 106, who hold no seniority rights in the class of painters, to use painter's equipment in performing painting of fire proofing on Structure 108.22 at Andora, California on the Sacramento Division.

The work consisted of applying primer and zone with four knot brushes on the structure in question, which is work that has historically and traditionally been assigned to and performed by employees holding seniority in the class of painters.

The claimants, who were laid off account of force reduction during the period in question, were available and fully qualified to have efficiently performed the subject painting work.

OPINION OF BOARD: The facts and issues herein are essentially the same as in Docket No. MW-11332, Award No. 11956, except for procedural differences.

Herein, letters as to past practice which are included in Employees' Ex Parte Submission are dated prior to Carrier's final denial of the claim. Employees having made proper affirmative showing as required by Circular No. 1 of this Board, and Carrier having raised no question as to admission of such letters, the letters are properly before us. However, the letters do not alter the result from that in Award No. 11956, because the letters do not, either expressly or by necessary implication, show that painters have done the work involved to the exclusion of carpenters and helpers.

Also herein, Carrier in its final denial on the property said in part:

"... Our file contains statements of approximately 40 B&B carpenters on the Sacramento Division indicating that it has been the practice for carpenters to apply 'zone' and rock chip to structures on the Sacramento Division. These statements are available for your inspection."

Carrier did not attach the 40 statements to its Ex Parte Submission. Employees have not denied the existence of such statements nor the assertion that Employees had the privilege of examining the statements. However, we deem Carrier's statement of little, if any, significance. Absent an express stipulation as to the consideration of such evidence, Carrier should have attached the statements to its Ex Parte Submission, in addition to making them part of the dispute during handling of the claim on the property.

Our opinion on the merits herein is the same as in Docket No. MW-11332, Award No. 11956.

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.