

Award No. 12840

Docket No. MW-12493

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

THE BELT RAILWAY COMPANY OF CHICAGO

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

(1) The Carrier violated the effective Agreement when it assigned other than painters from the Maintenance of Way Department to paint the steel coal hopper on No. 1 Boiler in the Clearing Power House on February 29 and March 1, 1960.

(2) Painters Ben Urbaniak and Theodore F. Wielgos each be allowed eight hours' pay at painter's straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On February 29 and March 1, 1960, a painter and a carpenter from the Locomotive department were permitted to paint the steel coal hopper on No. 1 Boiler at the Clearing Power House. This is the first time within the history of the subject Agreement that other than Maintenance of Way painters were assigned and/or permitted to perform painting work of this character!

During the handling of this dispute on the property the Employees repeatedly reminded the Carrier that all painting work of this kind had heretofore been assigned to and performed by Maintenance of Way and Structures Department employees. The Carrier never once denied that fact! In substantiation thereof, we have reproduced and attach hereto as Employees' Exhibit A all correspondence exchanged during handling of this dispute on the property.

The Agreement in effect between the two parties to this dispute dated April 15, 1940, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: A review of the letters reproduced as Employees' Exhibits A-5 and A-7, particularly the emphasized portions thereof, will immediately reveal that the undersigned General Chairman categorically and unequivocally reminded the Carrier's two highest appellate officers

to and following May 18, 1956, would certainly serve as a guide as to what was intended by the language incorporated within the Letter of Agreement dated May 18, 1956." (Emphasis ours.)

Copy of the Letter Agreement dated May 18, 1956, referred to, is attached hereto, marked Carrier's Exhibit No. 1.

In denying the appeal on June 21, 1960, the Company's highest officer, after checking with the Superintendent of Motive Power, made the following statement:

"The only paint work performed at the boiler house location since May 18th, 1956, was the above, done by Mechanical Department employees in connection with mechanical department work."

No evidence was submitted by the employees to contradict that last quoted statement.

The carrier denies that the agreement with the employees was violated and asserts the claimants, who were on duty as Maintenance of Way Department painters at the time the work on which this dispute is based was performed, are not entitled to any compensation other than that they had received for the service they performed on the claim dates.

(Exhibits not reproduced.)

OPINION OF BOARD: A mechanical department painter, on February 29 and March 1, 1960, painted and stenciled a steel coal hopper on No. 1 boiler in the clearing power house at the Belt Railway Company of Chicago.

Claimants represent painters in the Maintenance of Way Department, and allege that they have always performed this work and that it should have been assigned to them, rather than the mechanical department.

Carrier first defends this claim on the ground that the maintenance of the coal hopper is the responsibility of the mechanical department. It is apparent that this is not the question involved in this claim. Here we are concerned with the painting and stenciling only.

Secondly, Carrier defends on the basis of a letter of understanding which it alleges was intended to serve as a guide for governing the division of work between the Mechanical department forces and the bridge and building department forces. The significant language of the letter is as follows:

"We also agreed we will be guided in assigning future paint work in the Diesel Shop generally along the lines of the following."

It seems clear to us that this language limits the letter to a division of work in the Diesel Shop. It does not apply to the Power House.

Therefore, the instant question seems to be concerned primarily with the past practice. The employees' assertion that they have performed this work for a long period of time is totally undenied and unchallenged by the Carrier. It is the opinion of the Board that the employees have met the burden of proof in regard to the essential elements of this claim; that the same stand unfuted, and that the claim should be allowed.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of August 1964.