

Award No. 13741
Docket No. MW-14005

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it assigned or otherwise permitted other than B&B painters to paint two (2) salt boxes which were constructed by carpenter forces for use at the stations located at LaGrange Road and at Brookfield, Illinois.

(2) Painter A. T. Knott be allowed four (4) hours' pay at the painter's straight-time rate account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: On February 20, 1962 a carpenter from the B&B shop at Clyde, Illinois painted two (2) salt boxes with aluminum paint. These two (2) salt boxes had been constructed by carpenters in the shop at Clyde, Illinois. Used painted lumber was used in the construction of these salt boxes. The dimensions of these salt boxes are 3 ft. 6 in. wide, 3 ft. 6 in. high and 6 ft. long.

The factual situation was described in detail in a letter reading:

"BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Aurora, Illinois
March 19, 1962
24.3

Mr. H. J. McWilliams
613-14 Interstate Trust Bldg.
Denver 2, Colorado

Dear Brother McWilliams:

This is with reference to your letter of March 13, 1962, File 33-P 3 addressed to Brother A. T. Knott, 816 W. 18th (Basement Front) Chicago 8, Illinois, relative to B&B Painters painting salt boxes at Clyde, Ill.

used. There has been no change in this practice for 35 years, and there has been no change in any provisions of the agreement that would modify or change this well recognized practice.

In summary, it should be remembered that:

1. B&B carpenters made, of used lumber, six (6) salt boxes and applied a prime coat of aluminum paint to them before delivering them to the various suburban station platforms, where they were later given a finish coat of paint by painters to match the color scheme of the different stations.
2. For some undisclosed reason Petitioner claims that claimant should have been sent on a 50-mile round trip to apply this prime coat to only two (2) of these six boxes.
3. These boxes are not a part of any building; they are not attached to any building; they merely stand on the station platform; they contain rock salt that is used in the winter time to melt snow and ice on the platform.
4. Articles of this nature, made in the shop by B&B carpenters, have for more than 35 years been painted by the B&B carpenters before the articles are delivered or shipped to the points where they are to be used.
5. Awards cited in this submission, particularly Award 3130, prove conclusively that painters have no right whatever to paint anything that is not a part of a building.

If the Board will give consideration to these facts, it can reach but one decision, namely denial of the claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim was initiated on the property by the following letter, from Claimant herein, to Carrier's Superintendent:

"I understand that around the week of Feb. 62 of Feb. 1966 that the B&B Dept Painted 2 Salt Boxes to Be used Around Suburban Station and that this Lumber All Ready had a Prime Coat of Paint But the B&B Dept give then a Coat of Alumnum Paint. that is against our Agreement. So thereforth I am Claiming 4 hrs at Painter Rate of Pay. as we were at that time Located one outfit at East Eola Ill. and one Man could of went up on a Suburban Train ad Taken Care of this work. and get Back to outfit in that time of 4 hrs." [sic]

Throughout processing of the Claim on the property the Organization alleged that the painting of the boxes by employes of B&B Department violated the Agreement; but, at no time pointed to what Rule(s) of the Agreement was allegedly violated. Carrier, during this processing, replied that: (1) the painting of the boxes did not involve bridges, buildings or structures; (2) rejected the allegation that painters have the exclusive right to paint boxes; (3) asserted it was unaware of any rule in the Agreement which "prohibits B&B employes from applying a prime coat as in this case;" and (4) the paint applied was a prime coat.

We are of the opinion that when, on the property, a claim is made stating that an agreement has been violated without specifying the rule(s) allegedly violated and Carrier responds that it is not aware of any rule prohibiting the action complained of, the burden shifts to the Organization to particularize the rule(s).

It is axiomatic that: (1) the parties to an agreement are conclusively presumed to have knowledge of its terms; and (2) a party claiming a violation has the burden of proof.

When a respondent denies a general allegation that the agreement has been violated for the given reason that it is not aware of any rule which supports the alleged violation, the movant, in the perfection of its case on the property, is put to supplying specifics. It is too late to supply the specifics, for the first time, in the Submission to this Board — this because: (1) it in effect raises new issues not the subject of conference on the property; and (2) it is the intent of the Act that issues in a dispute, before this Board, shall have been framed by the parties in conference on the property.

Upon the record, as made on the property, we are unable to adjudicate the merits of the alleged violation. We will dismiss the Claim:

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;

That upon the record made on the property we are unable to adjudicate the merits of the Claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1965.