

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Arthur Stark, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
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 an employee holding no seniority as a B&B painter to paint a garage door on March 21, 22, and 26, 1962. (Carrier's file No. M-932-62.)

(2) B&B Painter A. T. Knott be allowed thirteen (13) hours' pay at his straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On March 21, 22 and 26, 1962, a B&B helper in the B&B shop at Clyde, Illinois consumed a total of thirteen (13) man hours in applying three coats of paint to three new overhead door sections. These door sections were thereafter installed by the Carrier's B&B carpenters in BT garage at Clyde, Illinois.

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

"May 16, 1962

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

Dear Brother McWilliams:

This is with reference to your letter File 33-P-3 relative to painting overhead door sections.

The facts are there were three door sections for an overhead door at the B. T. Garage ordered from the Rolaway Door Company, Galesburg, ordered by the Master Carpenter. I painted four coats of Neopreme Rubber base paint on the three door sections, one coat of paint thinned for primer, three other coats, one base coat, two finish coats.

I painted the prime coat on the door sections on March 20th, the Base coat on March 21st, and one finish coat on March 22, and the final and fourth coat on March 26th, 1962. The paint was very thick and

hard to cover and spread, as it was special paint that could not be thinned it was to repel steam and water in the wash room of the B. T. Garage. The B&B employes put the door sections in the overhead door at the B. T. Garage.

I painted the door sections in the Clyde Carpenter shop, on days mentioned above. I feel that 13 hours is very conservative, and cannot be disputed as I got three days of painter's pay for the job.

Respectfully submitted

/s/ W. C. Harbicht."

The claimant was available, willing and well qualified to have performed the subject painting work, had the Carrier so directed.

The agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto are by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Prior to the dates specified in the claim, the B. T. Company, located adjacent to the respondent Carrier's right-of-way at Clyde, (Cicero) Illinois, ordered three wooden sections to be used in repairing a seven-section door at their truck garage. The B. T. Company asked Carrier if it would have its B&B employes take care of the repairs to this door. The door leads into the truck wash rack where steam and condensation are present in large amounts. Before these three sections (described by the General Chairman in Carrier's Exhibit No. 5) were applied to the seven-section door, it was necessary to apply a Neoprene and Hypalon rubber coating to prevent damage to the wood by the steam and condensation in the wash rack. These preservatives were applied in Carrier's B&B Shop to the three sections involved prior to installing them along with the other four sections of the overhead door at the B. T. Company garage. The application of the preservatives involved was made by Mr. W. C. Harbicht, a B&B Carpenter who also has a seniority date as a B&B Painter of October 19, 1953. Copy of the Painters' seniority roster is attached, identified as Carrier's Exhibit No. 7. The repairs to the door involved were made subsequent to the dates specified in this claim. Claim was then filed by claimant on April 5, 1962 (Carrier's Exhibit No. 1) who was working as Painter at Princeton, Illinois, some 100 miles away from the B&B Shop on the dates specified.

These three sections were not a part of a door, they were not a part of a building or any structure on the dates that the rubber preservatives were applied.

The schedule of rules agreement between the parties, effective September 1, 1949 and amendments and supplements thereto are by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: In early 1962 the B. T. Company at Clyde (Cicero), Illinois ordered three wooden sections to be used in repairing a seven-section overhead door at their truck garage and requested Carrier to have its employes do the necessary repair work. Before the three damaged sections were replaced, Carrier instructed Local Chairman W. C. Harbicht, a Group 4 employe, to apply four coats of a Neoprene and Hypalon rubber base paint to insure against damage to the wood by steam and condensation from the garage's wash rack. He applied the last three coats (no issue is raised concerning the first prime coat) on March 21, 22 and 26, 1962, for which

he received three days' pay at the Painters' rate. B&B employees subsequently installed the new sections in the garage door.

On April 5, 1962 Mr. A. T. Knott, a Painter (seniority date August 1, 1930 and No. 4 in rank on the Painter Seniority Roster, Lines East) protested that "one of the B&B men . . . at the B&B Carpenter Shop at Clyde" painted an overhead door to be used at the B. T. Garage and claimed thirteen hours' pay for this alleged violation. On April 20, 1962 the claim was denied "inasmuch as all of the work . . . was done within the confines of the B&B Shop here at Clyde." In its subsequent May 11, 1962 denial, Carrier noted that "these were not doors, but three sections of a door which were not part of any building or structure at the time they were painted." In its August 7, 1962 denial Carrier noted, in part, that the work in question was "no different than the manufacture, assembly and painting work done in the shop at Havelock, where combination tool house-motor car house units are produced; or where sections of unit tool houses are manufactured and painted — all by employees other than B&B painters."

Rule 2 (Sub-Departments) establishes a Bridge and Building Sub-department (sub-section (b)) with seven occupational groups; Painters are in Group 3; Division Gang Mechanics and Helpers are in Group 4. Rule 5 (a) provides in relevant part that "seniority rights of all employees shall be confined to the group of the sub-department in which employed . . ." Rule 50 (c) declares that a Painter is "an employee skilled in and assigned to the mixing, blending or applying paint either by brush or spray."

It was held in Award 6169, involving these parties, that "it was not permissible for Carrier to have either a B&B Mechanic or Helper do painting without violating its Agreement with the Brotherhood unless what they did came within an agreed exception which permitted B&B employees to apply a prime coat . . . to new material used in repair work."

Carrier argues that the Claim should be dismissed since it is not the same Claim presented or handled on the property. We cannot agree. The original Claim, as noted above, protested the assignment of certain work to "one of the B&B men." The Claim before the Board refers to "an employee holding no seniority as a B&B painter." While couched in different terms, the claims are the same and, clearly, refer to the same man (Harbicht).

Carrier argues, additionally, that the Claim should be summarily denied since it is premised on the theory that a painter was entitled to the work and Harbicht actually was a painter holding seniority on the Painters' seniority roster. However, in Award 6949, involving these parties, the Board held that an employee's Rule 5 (a) seniority rights are confined to the group in which he is assigned "as long as his seniority permits him to hold a regular position in that group." And, significantly, "his seniority can be exercised on a position in another group only in case of force reduction, displacement, voluntarily accepting an assignment of more than 30 days in a lower grade, or by bidding for bulletined vacancies on new positions . . ." The record here shows that Harbicht was regularly assigned in Group 4 during March 1962. He did not exercise his seniority in Group 3 for any of the aforementioned reasons. Consequently, the fact that his name appeared at the bottom of the Group 3 Painter roster (Rank No. 16) cannot be deemed controlling.

Carrier affirms that the Claim should be denied because no work was performed on a building and therefore Rule 2 (b) was not abridged. But this Rule covers employees assigned to "constructing, repairing, and maintaining buildings, bridges, turntables, and other structures, including work incident

thereto . . ." The assignment in question here consisted of work incident to the repair of a door which was part of a building or structure. It is not significant that part of the task was performed in the B&B shop rather than on the structure itself. Moreover there is insufficient evidence in this record to support Carrier's assertion that Rule 2 (b) applies only to railroad buildings. True, Award 13045, involving these parties, held that linen storage racks did not represent a "structure," and cited another award holding that office furniture is no part of a building. And Award 3130 (also involving these parties) reveals that the Organization made no claim in that case on behalf of painters for painting work performed on machinery, racks, tables, and similar appurtenances not part of the building. A door, however, is part of the building, in our estimation, and these awards, consequently, are not controlling.

Carrier further argues that Harbicht's application of a preservative did not constitute painting, and cites Award 10296. That case, however, involved the application of a roof preservative which was applied by swabs after some carpentry repairs had been made and roofing paper applied. Here, by contrast, Mr. Harbicht applied four coats of special paint in the usual manner. He did engage in painting, in our judgment.

Carrier also maintains that thousands of items have been made, repaired, assembled and painted in this shop by B&B carpenters since 1927, without protest or claim, and that this practice must therefore be considered controlling. It is not shown, however, what these items were or whether they were similar to the door involved in this case. More significantly, this assertion was not made on the property (where Carrier referred only to work at another location).

While the state of this record is such as to suggest that the findings herein may not constitute a reliable precedent, Petitioner has shown, in our estimation, that painting work not specifically excepted from contract coverage, was assigned to an employe who was not entitled to such assignment. The conclusion that this work belonged to a painter is further buttressed by Management's action in paying Harbicht the painter's rate although, the record indicates, he was serving at the time in the lower-rated position of Carpenter Helper. Accordingly, the Claim will be sustained.

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 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 3rd day of March 1966.

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