



Award No. 15979
Docket No. MW-16372

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it failed to bulletin and fill a vacancy in the position of Painter (First Class Mechanic) which occurred in Paint Spray Gang No. 401 when Mr. D. O. Rush vacated said position for the purpose of "temporarily working on the mowing machine." (Carrier's file E-41-125.)

(2) Mr. Wayne Killingsworth be allowed the difference between the Painter's rate and what he received at the Painter Helper's rate for each work day of the period extending from the date the Painter's position was first vacated by Mr. Rush until the violation has been corrected and/or discontinued.

EMPLOYES' STATEMENT OF FACTS: The Carrier issued a bulletin reading:

"GULF, MOBILE AND OHIO RAILROAD COMPANY
Southern Region

Mobile, Alabama
August 12, 1963
Bulletin No. 2475

B&B Department
All Concerned:

Due to R. O. Thomas being off account of injury bids will be received via mail at 104 St. Francis Street, Mobile, Alabama by the undersigned up to and including August 23, 1963 for the temporary position of —

Painter (First Class Mechanic) Paint Spray Gang No. 401
with A. Wallace.

Only those applicants who are qualified painters will be considered for assignment to this position.

The Agreement in effect between the two parties to this dispute dated April 28, 1950, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: This claim involves the construction of Rule 2(h) of the Agreement between the parties effective April 28, 1950. For ready reference, the rule reads:

"(h) Seniority of Paint Spray Gang Employees will extend over the Southern Region. Employees working on this gang shall have their seniority rights restricted to such gang until the job or jobs are abolished and will not be subject to displacement. This gang shall consist of not more than 1 Foreman, 4 Painters (First Class B&B Mechanics), 1 Helper (Second Class Mechanic) and 1 Laborer (B&B).

The use of a Paint Spray Gang on a particular district is not to be construed as establishing any preferential rights of the employees in the Paint Spray Gang to the exclusive painting or repairing of bridges, buildings and other structures. Nothing herein is to be construed in such a way as to restrict the requirements that employees in Paint Spray Gangs or other Bridge and Building employees make repairs to bridges, buildings, or other structures incidental to the painting thereof, or to restrict the required method of painting.

When a vacancy occurs on this gang it will be bulletined and the senior available qualified B&B employe on the Southern Region will be assigned to such vacancy."

Particular attention is called to the second sentence, which states that the paint gang shall consist of **not more than 1 foreman, 4 painters, 1 helper and 1 laborer.**

The petitioners take the position that there "must be 4 painters in the Paint Spray Gang at all times" and presents a claim that because there were not 4 painters in the gang at all times, the helper must be paid at the painter's rate, or as though he were a painter, thus making the consist of the gang, 1 foreman, 4 painters, 1 helper and 1 laborer. The Carrier takes the position that the rule provides for a maximum of 4 painters, however, this does not mean a minimum of 4 painters.

OPINION OF BOARD: Mr. D. O. Rush, a Painter assigned to Paint Spray Gang No. 401 temporarily vacated his position to work on a mowing machine. Carrier did not fill this vacancy.

Brotherhood, in behalf of Mr. Wayne Killingsworth, a Painter Helper in Gang No. 401 claims that Carrier violated the Agreement when it failed to bulletin and fill the Painter position vacated by Mr. Rush. It relies on Rule 2 (h) to support its position.

Carrier denies violation of the Agreement and asserts that the Rule does not require it to fill every vacancy. It points out that the Rule establishes a maximum number of four painters in a gang, rather than a minimum number. It also states that Brotherhood in reading the last paragraph of Rule 2 (h) without reference to the first paragraph changes the Rule to mean that Carrier must have a gang of four painters at all times.

The central question in this dispute is whether Rule 2 (h) obligated Carrier to bulletin and fill the position vacated by Mr. Rush. This Rule reads as follows:

"(h) Seniority of Paint Spray Gang Employees will extend over the Southern Region. Employees working on this gang shall have their seniority rights restricted to such gang until the job or jobs are abolished and will not be subject to displacement. This gang shall consist of not more than 1 Foreman, 4 Painters (First Class B&B Mechanics), 1 Helper (Second Class Mechanic) and 1 Laborer (B&B).

The use of a Paint Spray Gang on a particular district is not to be construed as establishing any preferential rights of the employees in the Paint Spray Gang to the exclusive painting or repairing of bridges, buildings and other structures. Nothing herein is to be construed in such a way as to restrict the requirements that employees in Paint Spray Gangs or other Bridge and Building employees make repairs to bridges, buildings, or other structures incidental to the painting thereof, or to restrict the required method of painting.

When a vacancy occurs on this gang it will be bulletined and the Senior available qualified B&B employee on the Southern Region will be assigned to such vacancy."

The last paragraph of this Rule establishes a procedure for bulletining a position when a vacancy occurs. This provision becomes applicable after Carrier exercises its managerial prerogative to fill a vacancy.

Our findings that Rule 2 (h) does not preclude Carrier from blanking a position are consistent with a considerable number of awards, including Award Nos. 6889, 12358 and 14252.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 30th day of November 1967.

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