

Award No. 16025

Docket No. MW-16652

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, 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 painting work on the B. T. Garage at Berwyn, Illinois to other than B&B department painters (Carrier's File M-1123-65).

(2) Foreman R. A. Renner, Painters A. T. Knott and B. M. Kruse each be allowed pay at their respective straight time rates for an equal proportionate share of the total number of man hours consumed in performing the work referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On April 9 and 12, 1965, Mr. James Leemon, who is employed as a truck painter by the Burlington Truck Lines, and who holds no seniority under the Agreement, performed the work of painting sixteen (16) overhead doors and the outside walls of the B. T. Garage at Berwyn, Illinois. The Carrier owns the B. T. Garage and is responsible for the maintenance (including the painting) of this building.

The claimants have established and hold seniority rights in their respective classification in Group 3 of the Bridge and Building Sub-department. During the period involved here, the claimants were regularly assigned to their respective positions in Lines East Paint Gang No. 3, and were available to perform the subject work.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

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

- (1) There is no one employed in Carrier's Mechanical Department named James Leemon who it is alleged painted the B. T. garage;
- (2) The B. T. Company advised that no painting of any kind was performed on the garage on the dates specified in the claim, either by a CB&Q employee or by a B. T. employee;
- (3) The garage is, as the General Chairman described it, a "B. T. Truck garage", and as such, is a B. T. Company facility, and not a CB&Q facility; that the Truck Line is responsible for any and all maintenance, including painting of the garage;
- (4) CB&Q painters had never painted the garage at any time prior to the date of the claim;
- (5) The Agreement between the Carrier and the BMWWE does not confer any right to work over which the Carrier does not have control.

The General Chairman replied to Carrier's letter of November 4, 1965 in his letter dated June 28, 1966 (Carrier's Exhibit No. 8), and advised simply that:

"In view of the fact there seems to be no particular effort being put forth to retain the work for the painters, we cannot agree with the contents of your letter."

The schedule of rules agreement between the parties, effective September 1, 1949, and amendments thereto, including the August 21, 1954 Agreement, are by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is based on the allegation asserted by Brotherhood repeatedly on the property and its Statement of Facts in its Ex Parte Submission that "On April 9 and 12, 1965 (a person not covered by the Agreement) performed the work of painting (a building owned by the Carrier)". (Matter in parentheses is a digest of the text in the Ex Parte Submission.)

Carrier denied on the property that on those dates anyone did any painting on the building in question; the Employees presented no evidence to show that the painting did in fact take place, either on the days alleged or at any other relevant time. Thus, the Employees have failed to get their case off the ground.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of December 1967.