



Award No. 17093

Docket No. MW-17834

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**NORFOLK AND WESTERN RAILWAY COMPANY
(LAKE REGION)**

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

- (1) The Carrier violated the Agreement when, on September 7, 16 and 27, 1966, it assigned and used Carpenter N. L. Warner instead of furloughed painter D. E. Smith to perform painting work on the switchmen's Building at Narlo, west end of Bellevue Yard. (System File 30-20-183).
- (2) Painter D. E. Smith now be allowed sixteen (16) hours' pay at his straight time rate because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant had established and held seniority as a painter (April 13, 1960) within the Bridge and Building Department of the Ft. Wayne—Chicago Division. He was assigned and worked as such on a Bridge and Building paint gang until November 1, 1965, when his position was abolished. Since his seniority did not enable him to exercise his seniority and work as a painter, he worked thereafter, including the claim dates, on various position on Bridge and Building carpenter gangs.

On the dates set forth in Part (1) of the Statement of Claim, the work of painting a switchmen's building at the west end of Bellevue Yard at Narlo, Ohio on the Ft. Wayne—Chicago Division was assigned to and performed by Carpenter N. L. Warner, who was assigned to and working as such in a Bridge and Building carpenter gang. Carpenter Warner, who did not hold any seniority as a painter, consumed eight (8) hours on September 7th, four (4) hours on September 16th and four (4) hours on September 27th in the performance of the painting work.

The claimant was available and fully qualified to perform the painter's work here involved but was not given the opportunity to do so.

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.

There is an agreement in effect between the Norfolk and Western Railway Company—Lake Region (formerly The New York, Chicago and St. Louis Railroad Company—Nickel Plate, Lake Erie and Western and

(Exhibits not reproduced.)

OPINION OF BOARD: This claim has come to the Board with a technical error; or, as Carrier said, with an inadvertent reference. Donald E. Smith is a track department employee. Donald H. Smith is a B&B employee.

It is abundantly clear from the record that both the Carrier and Organization are fully aware that Donald H. Smith, B&B employee, was the Claimant in question. He is described not only as to his seniority dates, but as to his employment on specific days in question—by both parties. In correspondence between the parties the initial is interchanged.

Neither side has been misled, and no rights have been prejudiced.

Carrier raises the identification question for the first time in its plea to this Board, as it does other questions not considered on the property and which, consequently, are not to be considered by the Board.

It was claimed by the Carrier on the property that the 16 hours of painting work done by a B&B carpenter was incidental to the carpenter's work.

We do not find in Rule 52 (b) language that would make work of a carpenter or painter incidental to the other. In sub section (c) of that rule, the word "incidental" is used with regard to certain work in the Track Department.

This agreement makes clear in Rule 1 (c) 2 that there are different and specific classes of B&B Department employees. Although, as this Board has said before, titles are an uncertain guide to the actual duties of a position, some types of work fall under an occupational title according to common understanding. It is the case with painter and carpenter.

Carrier tells us that the practice of assigning work of the character involved in this case to other than painters is usual and historic with the Carrier. We did not find this is more than allegation and that not during the proceedings on the property.

We do not find that Rule 51 provides Carrier on avenue to cross craft lines, as was done when a B&B department carpenter was assigned work of painting a building. We conclude that the Agreement was violated.

Donald H. Smith, the B&B employee recognized as Claimant, is acknowledged in the record to have seniority as a painter and his claim is for the amount which he would have earned if he had been assigned to perform the work. We do not agree that because he was otherwise employed during the period in dispute he is not entitled to the requested pay, which is so granted.

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 violated.

A W A R D

Claim sustained as described in Opinion of Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1969.