Award Number 17491
Docket Number MW-16680
NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

G. Dan Rambo, Referee

PARTIES TO DISPUTE:
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSISSIPPI EXPORT RAILROAD COMPANY

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

(1) The Carrier violated the agreement when it failed and refused to compensate Noath Roberson at the shop rate for service performed on the Carrier's box cars from July 19 to August 31, 1965.

(2) Mr. Noath Roberson now be paid the difference between the shopmen's rate and the section laborer's rate (44 cents per hour) for 174 hours (a total of $76.56).

EMPLOYES' STATEMENT OF FACTS: Section Laborer Noath Roberson was assigned to perform the work of repairing box cars in the Carrier's shops. During the period extending from July 19 to August 31, 1965, the claimant consumed a total of 174 hours in the performance of this work which consisted of sandblasting and spray painting the box cars as well as the carpentry work necessary to repair walls and floors of the cars.

Even though another section laborer, assigned to perform the same work, received compensation therefor at the proper shopman's rate of $2.49 per hour, the Carrier refused to pay the claimant the proper shopman's rate and paid him at the lower section laborer's rate of $2.05 per hour instead.

A conference was held on January 5, 1966, at which time the Carrier offered to settle the claim by paying the claimant the shopman's rate for the days he actually used a paint sprayer. The offer was declined and, during a subsequent conference held on March 9, 1966, the Carrier made the same unsatisfactory offer.

Claim was timely and properly presented and handled by the Employes 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 November 1, 1962, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: During the time referred to in this claim, Noath Roberson was used to clean box cars so they could be repainted. The cleaning consisted of removing rust, grease, loose paint

and dirt. It has been the practice for many years on this Carrier for laborers in the Maintenance of Way Department to clean the inside of box cars, however, this is the first occasion that the Carrier has had to clean the outside of box cars.

The claim is based on a violation of the scope rule of the Agreement dated October 22, 1962, which provides:

RULE 1 — SCOPE

"The rules contained herein shall govern the hours of service, working conditions and rates of pay of all employes in the Maintenance of Way Department of the Mississippi Export Railroad. This agreement does not apply to Supervisory Employes, Soliciting Agents or employes of the General Office.

NOTE: Employes covered by this agreement will only perform work in the classification or classifications in which they hold seniority."

OPINION OF BOARD: Claimant Roberson was assigned to do certain work totaling 174 hours on boxcars in Carrier's shop between July 19 and August 31, 1965. In such work he cleaned the outside surface of cars preparatory to repainting and on at least portions of two days he was involved in the use of a paint sprayer in the repainting of the cars. Carrier has offered to pay Claimant for those two days at the shop rate of $2.49 per hour in conference of March 9, 1966 on the property and repeated such offer in letter of Carrier's representative of March 10, 1966. This Board concurs that Claimant should be so reimbursed. All other allegations are in conflict and unsupported by proof by either party.

Employes cite Rule 10—Preservation of Rates and ask that Claimant be compensated at the shop rate of $2.49 per hour for the 174 hours rather than at the lower section laborer's rate of $2.05 per hour.

The record in this matter is extremely sparse, but nowhere in its limited pages is there an offer of proof by rule or practice or even an allegation that the work performed by Claimant was exclusively shopmen's work or was not section laborers work.

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 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 has been violated only to the extent covered in the Opinion.

AWARD

Claim sustained in part according to Opinion and dismissed in part.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1969.

CARRIER MEMBERS' DISSENT TO AWARD NO. 17491, DOCKET NO. MW-16680

The claim herein should properly have been denied or dismissed in its entirety.

While in the handling of the dispute on the property the Carrier offered to pay Claimant at the shop rate for the two days he actually used a paint sprayer, such offer of settlement was rejected by the Organization on the property. The offer was rejected by the Petitioner in its submission to the Board; it was rejected by the Labor Member in his presentation to the Referee wherein he insisted upon the claim being sustained as made; and it was rejected by the Referee in his first proposed Award.

The Carrier described the offer as "an effort to settle this case by allowing the claimant two days' pay at a higher rate, simply as a nuisance claim." The Petitioner had no interest in the offer of settlement until a proposed Award had been issued by the Referee dismissing the claim in its entirety.

It is well settled that an offer of compromise is not competent evidence or an admission against interest. If the Petitioner had been interested in the offer of settlement, there would have been no reason for this dispute being submitted to this Board.

The Award is in palpable error; makes a mockery of Board proceedings, and we dissent.

/s/ P. C. CARTER
P. C. Carter

/s/ G. C. WHITE
G. C. White

/s/ R. E. BLACK
R. E. Black

/s/ W. B. JONES
W. B. Jones

/s/ G. L. NAYLOR
G. L. Naylor

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.