



Award No. 18697

Docket No. MW-19104

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood in behalf of:

Louis H. Howard, Painter, for all time made by T. H. Sansbury, Carpenter, working as Paint Inspector at Delaware Avenue Bridge on October 6, 1969 and all subsequent days in connection with the sandblasting and painting of same by Hudson M & E Company. (System File MW-70-1).

EMPLOYEES' STATEMENT OF FACTS: Claimant Louis H. Howard is the senior painter within the Painter Group. His seniority in that class dates from October 31, 1950.

The Carrier desired to assign the work of sandblasting and painting its Delaware Avenue Bridge to outside forces and, within a letter dated September 15, 1969, requested the Employees' concurrence therewith. The Employees acceded to the Carrier's request with the understanding that a B&B Inspector would be assigned to oversee the work. Instead of assigning an employee from the painter's seniority group to oversee this work the Carrier assigned an employee from the carpenter's seniority group to oversee said painting work.

The claimant was available, willing and fully qualified to have performed this work.

The rules controlling here were quoted within a letter reading:

"February 4, 1970

Mr. C. W. Shaw, Jr., Manager
The Washington Terminal Company
Union Station
Washington, D. C. 20002

Dear Sir:

This will acknowledge receipt of your letter of January 28, 1970 in connection with Claim MofW-70-1, Louis H. Howard, October 6, 1969, and Subsequent Dates.

OPINION OF BOARD: On September 15, 1969, Carrier informed the Organization that its Delaware Ave. Bridge was to be sandblasted, painted and repaired by outside forces. On September 23, 1969, the Organization concurred with the contracting out of the work with the understanding that a B & B Inspector would oversee the involved work and that B & B forces would not be reduced while this work was being performed. Carrier designated a B & B Inspector Carpenter to inspect the work while it was being performed. The Organization contends that Carrier violated the Agreement because it failed to designate Claimant, the Senior qualified Paint Inspector, to perform the inspection work. In support of this Claim, the Organization alleges that an employee establishing seniority as a B & B Inspector within the Carpenter Group does not establish seniority as a B & B Inspector within the Painter and/or Mason Group; that "B & B Inspector" classifications exist within each of the Seniority Groups (Carpenters, Painters and Masons); and that Inspectors within each group must inspect work relating to their own respective group. Carrier contends that there is no B & B Inspector position within either the Painters or Masons Group for the reason that these jobs have never been created; that the classification of Painters, Carpenters and Masons are not separate and distinct from each other insofar as work rights are concerned; and that the employees who have gained "B & B Inspector" rating on this property performed all inspection work required regardless of the nature of the work.

The evidence adduced from the record discloses that although there is in existence a form used by Carrier known as "Seniority Roster," which provides a space for "B & B Inspector" opposite a space for "Painter," there is no "B & B Inspector" under the "Painters" classification carried on the Roster. On the same Seniority Roster, there appears to be three B & B Inspectors under the Carpenters group; and no B & B Inspectors under the Painter group. Therefore, this Board finds that Carrier did not have an employee with the classification of "B & B Inspector-Painter" at the time this dispute arose. This Board cannot retroactively create a "B & B Painter-Inspectors" Position.

This Board further finds that the Organization agreed that outside forces could perform this work on the condition that a "B & B Inspector" would oversee the work. The Organization did not specify that such B & B Inspector must be from the Painters group. Carrier complied with the condition and the Organization did not complain until the work was finished. Therefore, this Board, having failed to find a Rule violation, will deny this claim.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of September 1971.