



Award No. 18950

Docket No. MW-16217

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, on August 29, 1964, it assigned or otherwise permitted other than B&B forces to perform the work of cleaning and painting the "dope shack" floor at the Car Department Rip Track, Aberdeen, South Dakota. (Carrier's Case D-1454).

(2) B&B employees H. M. Larson, S. R. Schwan and Verlin Hasvold each be allowed eight (8) hours' pay at their respective straight time rates because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: On August 29, 1964, the Carrier assigned or otherwise permitted Car Department employees at Aberdeen, South Dakota to clean and paint the floor of the "dope shack" located near the repair (rip) track at that location. Said employees consumed a total of twenty-four (24) man hours in the performance of the work. The area of the floor was 225 square feet.

The work is of the nature and character that has been customarily and traditionally assigned to and performed by the Carrier's Bridge and Building Sub-department employees.

The claimants, who were working and headquartered at Aberdeen, South Dakota, were readily available, willing and qualified to have performed the work, had the Carrier so desired.

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.

CARRIER'S STATEMENT OF FACTS: The instant claim, for reasons that will be fully explained in "Carrier's Position," has not been properly

handled by the Organization in accordance with the provisions of Article V of the Agreement of August 21, 1954, Section 3 First (i) of the Railway Labor Act and/or Circular No. 1 of the Board, therefore, the instant claim is barred.

The instant claim involves the question of "* * * painting the floor of the dope shack * * *" at Aberdeen, South Dakota which, by the claim which they have presented, the employees are contending is work exclusive to Maintenance of Way Employees, but which, in fact, is not work exclusive to employees within the scope and application of the Maintenance of Way Agreement as the Carrier will establish in its "Position."

The dope shack is a small building on the rip track at Aberdeen which is used by the Car Department for storing and soaking lubricator pads for journal boxes.

There is attached as Carrier's Exhibit "A" copy of letter written by Mr. S. W. Amour, Assistant to Vice President, to Mr. L. E. Joslin, General Chairman, under date of April 12, 1965 and as Carrier's Exhibit "B" copy of letter written by Mr. Amour to Mr. Joslin under date of June 30, 1965.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants contend that Carrier violated the Maintenance of Way Agreement when, on August 29, 1964, Carrier assigned employees in the Car Department to clean and paint the "dope shack" floor situated near the repair track at Aberdeen, South Dakota. Claimants request that they be allowed eight hours pay at their respective time rates on account of loss of work opportunity to employees in the B&B Department.

Carrier has raised procedural questions about the handling of the claim on the property and argues that the claim which the employees have progressed to this Board is not the same claim that was appealed to S. W. Amour, Assistant to the Vice President of the Carrier. We find these contentions to be without substantial merit. In this regard, we call attention to Award 13229 of the Third Division which reads in part as follows:

"it cannot . . . be seriously urged that the Carrier has been misled as to the issue or claim confronting it. Unless there is a real and substantial variance between the claim presented to this Board and the one presented to the Carrier on the property this Board would not be justified in dismissing this claim; therefore, the request for dismissal of the claim is denied."

Moreover, the record persuades us that painting of Carrier's structures on the System belongs to employees in the B&B Department and that when such work has been performed by other crafts, as in the instant dispute, protests and claims have been filed and Carrier has in the past acknowledged the validity of such remonstrances and contentions.

This Board dealt with the matter of painting in Docket MW-16979 and held that such work was the work of Carrier's B&B forces.

In view of the foregoing we sustain the claim that Carrier violated the Agreement when on, August 29, 1964, it assigned or otherwise permitted other than B&B forces to perform the work of cleaning and painting the aforementioned "dope shack" floor. However the claim for eight hours pay is not allowed.

Carrier stated that the job required only forty-five minutes and the Organization did not deny their allegation. Thus, the Claimants are each allowed forty-five minutes pay at their straight time rates because of the violation described herein.

In this case the Brotherhood Railway Carmen of America was served third party notice.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier violated the Agreement as set forth in the Opinion of the Board.

AWARD

Claimants Larson, Schwan and Hasvold each be allowed forty-five minutes pay at their respective straight time rates for violation as set forth in Opinion of the Board.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1972.

CARRIER MEMBERS' DISSENT TO AWARD 18950, DOCKET MW-16217 (Referee Hayes)

We respectfully submit that this award is palpably erroneous and invalid for these reasons:

1. The work involved is "applying floor surface conditioner * * * to make it oil and grease resistant;" and there is not a scintilla of evidence in the record to refute Carrier's consistent contention that such work "has always been performed by various crafts, including Car Department employees * * *"

2. The controlling agreement does not reserve such work to Maintenance of Way Employees.

3. Although the record admittedly shows that only "one (1) Car Department employe spent only 45 minutes" doing this work, the award purports to allow three separate claimants 45 minutes each.

4. The record shows that the claim was not "handled in the usual manner."

Each of these points was fully discussed in the memorandum which Carrier Members submitted to the Referee.

We dissent.

G. L. Naylor

P. C. Carter

R. E. Black