

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19382
Docket Number MW-17847

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Canadian Pacific Railway Company

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

(1) The Agreement was violated when the Carrier used shop craft forces instead of B&B forces to paint the inside of the engine house at Newport, Vermont. (System file 20651/161-B).

(2) B&B employees L. J. Morin, J. P. Ricard, P. W. Monfette, R. Crawford, W. Davis and E. M. L'Esperance each be allowed sixteen (16) hours' pay at their respective time and one-half rates of pay because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: This dispute requires an interpretation of Rule 35 of the Current Agreement, which is:

"Except in cases of emergency or temporary urgency, employees outside of the Maintenance of Way service shall not be assigned to do work which properly belongs to the Maintenance of Way Department, nor will Maintenance of Way Employees be required to do any work except such as pertains to his division or department of Maintenance of Way Service."

This dispute arose for the reason that during the month of May, 1967, Carrier assigned the work of painting the inside of its Diesel Shop at Newport, Vermont, to Shop Craft Employees not covered by the Maintenance of Way Agreement. The Organization contends that this work should properly have been assigned to Claimants who hold seniority within the B&B sub-department on the Farnham Division and quote the above Rule 35 in support of their contention.

Carrier defends this claim by alleging past practice showing that Mechanical Department Forces heretofore have painted the interior of round-houses and Diesel Shops. This contention is not well taken. The Agreement to be interpreted in this instance pertains only to employees on lines operated in the States of Maine and Vermont in the U.S.A. Carrier has relied upon a history of negotiations covering Canadian employees. Since the Claimants herein are not parties to the Canadian Agreement, Carrier's submission pertaining to Canadian employees is of no avail.

It is the opinion of this Board that the involved work belongs to the Bridge and Building Department employees. Rule 35, quoted above, outlines

the only two exceptions to the right of B&B employes to perform this work - emergency or temporary urgency. Having failed to show that an emergency existed or that there was a temporary urgency, the involved work should have been assigned to Claimants. Also, correspondence between the parties, contained in the record, indicates that Carrier acknowledged that the involved work properly belongs to B&B forces.

This claim will be sustained. However, Claimants are not entitled to compensation at the punitive rate. This case will be sustained for the number of hours claimed at the straight time rate.

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 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 was violated in accordance with the Opinion.

A W A R D

Claim sustained for the number of hours claimed at the straight time rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.