

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20454
Docket Number MW-20370

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Burlington Northern Inc.

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

(1) The Carrier violated the Agreement when it used Painter Foreman C. Schwartz instead of furloughed Painter E. L. McKinney to perform painting work beginning April 5, 1972 at Hastings, Nebraska (System File 33-P-3/MW-84(p)-1 6/21/72).

(2) Painter E. L. McKinney be paid for all time lost from April 5, 1972 because of the violation referred to in Part (1) hereof.

OPINION OF BOARD: The Carrier cut back a four man painting crew, so that only the Foreman was left. He then performed painting work, but did so under the title of Foreman and was paid at the Foreman's rate. The claim is that the Claimant, a furloughed Painter, should be paid for the painting work performed by the Foreman. The Claimant holds a Painters' seniority date of September 14, 1971 on the Lines West Painters' Roster. The Foreman holds seniority as a Painter on the same roster; his Painters' seniority date is September 3, 1941.

The pertinent agreement texts are found in Rule 55 B and J, and in Paragraph 6 of Appendix K:

"RULE 55. CLASSIFICATION OF WORK

* * * * *

B. Foreman.

An employe assigned to direct the work of men and reporting to officials of the railroad shall be classified as a Foreman.

* * * * *

J. Painter.

An employe assigned to mixing, blending, sizing, applying of paint, kalsomine, whitewash, or other preservatives to structures, either by brush, spray or other methods, or glazing, including the cleaning or preparation

"incidental thereto, shall be classified as a painter.
(This will not preclude the use of carpenters to do painting or helpers to perform preparatory or other work customarily accepted as helpers' work).

* * * * *

APPENDIX K

The following understandings are agreed to in connection with the new Maintenance of Way Agreement:

* * * * *

6. It is agreed that employees holding seniority as painters on any of the former railroads will be given preference to painting work to the same extent as prior to the effective date of this Agreement."

The Employees argue that the Foreman was restricted from performing the painting work by Rule 55 B and that the Claimant was entitled to such work under Rule 55 J. Apparently, the predicate of this argument is that a Foreman's position and a Painter's position have a distinct demarcation line in the character of the work accruing to each position. The Employees' argument may have been applicable to the facts and rules involved in the sustaining Awards cited in support of the claim; however, the argument has no relevance in this case. The determinant in this case is the provision in paragraph 6 of Appendix K which sets out the preference rights of employees having Painter's seniority on the former railroads which have been merged into the herein Carrier, the Burlington Northern, Inc. Such provision quite clearly preserves a preference to painting work, but only for employees who had Painters' seniority prior to the effective date of the current Agreement, May 1, 1971. The Foreman involved in this case holds a Painters' seniority date of September 3, 1941, which is prior to the effective date of the Agreement. The Claimant, in contrast, holds a Painters' seniority date of September 14, 1971, which is subsequent to the effective date of the Agreement. Thus, under paragraph 6, Appendix K, the involved Foreman has a preference to painting work, while the Claimant has no preference at all. Accordingly, as between the Claimant and the involved Foreman, there is no basis on which to say the Claimant is entitled to the painting work performed by the Foreman. The claim shall be denied.

See recent Third Division Award No. 20308 for a similar interpretation of paragraph 6, Appendix K, as well as for a more detailed discussion of the preference rights established therein.

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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1974.