

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25928

Docket Number MW-25662

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The Carrier violated the Agreement when it assigned Shop Craft painters instead of Bridge and Structures forces to paint nine (9) electrical boxes, crane arms and the Armature Room in the Electrical Shop on October 7, 8, 9, 1 and 13, 1982 (System File C-TC-1470/MG-3800).

(2) Because of the aforesaid violation, B&B Mechanics W. W. Smith, H. Clay, D. L. Dean, C. Hanshaw, K. Brown, D. Scarberry and C. Stratton shall each be allowed an equal proportionate share of the thirty-six (36) man-hours expended by Shop Craft painters in performing the work referred to in Part (1) hereof."

OPINION OF BOARD: The Organization contends that on October 7, 8, 9, 12 and 13, 1982 Carrier required Shop Craft painters to perform the work of painting nine (9) electrical boxes, overhead crane arms and the Armature Room in the Electrical Shop located in the Huntington Shops. The Organization avers that work of this character was customarily performed by Carrier's Bridge and Structures forces and is contractually reserved to them under the provisions of Rule 66(c) and Appendix H. The Organization asserts that contrary to Carrier's denial that any such work was performed on the claim dates, it (the Organization) presented photographs showing that the walls and hand railings of the Armature Room were painted bright green and bright yellow, respectively, and the electrical boxes were painted bright orange.

Carrier contends that no painting work was performed in the Armature Room during the claim period and denies that Shop Craft painters painted electrical boxes in the repair gang area of the Huntington Shop. Instead, it avers that on October 8, 1982, two (2) locomotive painters consumed one man-hour painting the bottom of two hundred fifty ton crane hooks for safety reasons which was permissible and within the recognized division of work at the Electrical Shop. It maintains that the Organization has failed to present evidence that the work was performed on the dates cited, and observes that October 9, 1982 was a rest day at the Huntington Shops. In its Rebuttal Submission, it took umbrage at the Organization's position that Appendix H was applicable and protected such work, arguing that Appendix H was never referenced or discussed on the property. It asserts that this is new material and barred from the Board's consideration.

In our review of this case, we agree with Carrier's position. As the moving party in the dispute, the Organization was under a more compelling burden to demonstrate that the work was performed on the cited dates. While the photographs, at least on their face, were indeed persuasive, additional factual substantiation was needed to overcome Carrier's affirmative defense. Eyewitness written statements would have strengthened the Organization's petition as well as unequivocal rebuttal evidence that October 9, 1982 was not a rest day. In the absence of this proof, we are not in a clear firm position to determine whether the Controlling Agreement was violated. As an aside, we might note that the Organization belatedly raised in its Ex Parte Submission the relevancy and application of Appendix H.

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

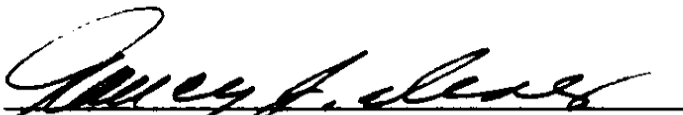
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.

