

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29676  
Docket No. MW-29899  
93-3-91-3-273

The Third Division consisted of the regular members and in addition Referee Hugh G. Duffy when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Roadway Machine Mechanic L. Green instead of Painter O. L. Guillory to perform equipment painting work at the A&WE Shop in Pine Bluff, Arkansas beginning January 15, 1990 and continuing (System Files MW-90-16-CB/489-40-A and MW-90-35-CB/492-65-A).

(2) As a consequence of the aforesaid violation, Mr. O. L. Guillory shall be allowed pay at the No. 1 Painter straight time rate for all time expended by Mr. L. Green painting equipment beginning January 15, 1990 and continuing until the violation is corrected."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This claim was filed by the Organization when the Carrier assigned equipment painting work at its Pine Bluff Automotive and Work Equipment (A&WE) Shop to an A&WE Mechanic. The Organization asserts the work should have been assigned to Claimant, whose previous position as a B&B Painter at the A&WE Shop had been abolished. The Organization maintains that this work has been customarily and ordinarily assigned to employees holding seniority as B&B Painters.

It is well established that the Organization has the burden of proving exclusivity in work disputes between classes of employees (see Third Division Award 26460 between the parties). The requisite standard of proof was set forth in Third Division Award 27759.

"Rule 45 is a Classification of Work Rule which categorizes work done by members of the craft. It is not a Rule which can be used to establish exclusive purview over work. Such is the function of Rule 1 (Scope) of the Agreement. In order for the latter be used to sustain a claim such as the instant one, the Organization must show, by means of substantial evidence, that the work in question has been, as a matter of past practice, reserved to the members of its craft on a system-wide basis (Third Division Awards 24779, 25077, 25125, 25350). As moving party in this dispute, such burden of proof rests with the Organization (Second Division Awards 5526, 6054; Fourth Division Awards 3379, 3482). Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs. Labor Board, 305 U.S. 197, 229). A review of the record fails to show that evidence has been provided by the Organization in this case."

While the Organization has made numerous conclusionary allegations, it failed to rebut the Carrier's material assertion on the property that "A&WE Mechanics have regularly and routinely performed painting of trucks and work equipment at Pine Bluff, Arkansas as well as other locations on the system." This assertion thus stands as established fact, and we therefore conclude that the Organization has failed to carry its burden of proof in this matter.

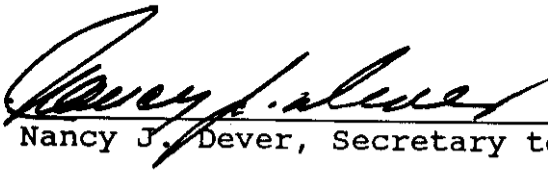
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest   
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 29th day of June 1993.