

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43464
Docket No. MW-43764
19-3-NRAB-00003-160555**

The Third Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Car Shop employes and supervisors to repair and remodel the Queensgate Yard Car Shop (i.e., paint the floor) on February 12 and 13, 2015 and failed to offer such work to Claimants B. Stepp and D. Ebeling (System File I50604715/2015-184748 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants B. Stepp and D. Ebeling shall now be compensated one hundred sixty-five (165) hours of straight time and eleven (11) hours’ overtime, divided equally, at their respective straight time and overtime time rates of pay.”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

On February 12, and 13, 2015, the Carrier assigned Car Shop employees and supervisors to perform the work of painting the floor in the Queensgate Yard Car Shop. By five (5) statements dated December 17, 2015 the Organization supported their assertions that 8 Carmen and 3 supervisors performed the painting work on the shop floor in question.

We find that the work of painting the floor in the Queensgate Yard Car Shop is work reserved to maintenance of Way Department forces under the clear and unambiguous language of the Scope Rule.

The Carrier's May 11, 2015 letter contends that the painting was only to benefit the Car Shop employees so it seems that the work would fall to them. The Carrier appears to base its defense of assigning the work to Car Shop employees on the third paragraph of the Scope Rule. The third paragraph states in part that any Maintenance of Way work that has been performed by employees not covered under the Maintenance of Way Agreement may continue to be so performed at that location. The paragraph also states that this exception is conditioned on a showing of a past practice or agreement. The record lacks any evidence which establishes that any past practice or agreement existed which allowed Car Shop employees at this location to perform Maintenance of Way work of painting the Car Shop floor.

The claim in this case is primarily to enforce the Scope Rule of the Agreement and not for work performed. If the Scope has been violated, then the penalty is imposed to the extent of the work lost. This is done to maintain the integrity of the Agreement (See Third Division Award 10229).

As a result of the Carrier's violation of the Scope Rule in this case, the claim is sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 1st day of March 2019.