

Special Board of Adjustment No. 1016

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Consolidated Rail Corporation

STATEMENT OF CLAIM:

- "(1) The Carrier violated the Agreement when it assigned Car Shop employees to perform Bridge and Building Department work (painting) at the Car Shop in Columbus, Ohio on January 2, 3, 4, 6 and 7, 1986 (System Dockets CR-2450 and CR-2451).
- (2) Because of the aforesaid violation, Messrs. E. A. Sellers, R. N. Williams and J. K. Lafferty shall each be allowed forty (40) hours of pay at their respective straight time rates."

FINDINGS:

The claim is that Carrier violated the Scope Rule by using certain named Car Shop employees rather than the claimants to paint interior walls, window sills and doorways at the Car Shop offices in Buckeye Yard at Columbus, Ohio. According to Petitioner, each of these Car Shop employees performed that painting work for eight hours on the five dates mentioned above in the Statement of Claim.

As Petitioner emphasizes, the Scope Rule of the applicable agreement expressly covers the "maintenance of..." buildings and other structures and specifies that the primary duties of B&B mechanics are to "construct, repair and

maintain bridges, buildings and other structures."

Petitioner contends, and we agree, that such maintenance includes the painting of interior walls and other portions of buildings.

The record indicates that the above mentioned painting of the Car Shop at Buckeye Yard is the work of painters in the B&B Department and should not be performed by Car Department employees. Each of the claimants states that the named carmen nevertheless repainted parts of the Car Shop on January 2, 3, 4, 6 and 7, 1986. The following statement dated November 13, 1986 and signed by five of the nine carmen named by the claimants is also relevant:

"During the month of January, 1986, we, the carmen of the Buckeye Yard Car Repairshop, painted various parts of the Buckeye Yard Car Shop including the building proper, building support posts, interior walls, storage racks, hose reels and supports, and other building structures. In the past, the B&B Dept. has performed these tasks."

While two of those five carmen (Crabtree and Loring) subsequently modified their statements by indicating that they did not paint any walls though they did paint supports, the other three signing carmen did not revise their statements in any way.

The evidence submitted by Petitioner, though not overwhelming, is sufficiently clear and specific to support the claim. Despite statements by Carrier foremen that the carmen did not paint any of the areas mentioned above, it is this Board's conclusion that carmen painted interior walls,

supports and other parts of the building in question and that thereby the Scope Rule was violated.

We regard any improper siphoning off of work from a collective bargaining agreement as an extremely serious contract violation, one that can deprive the agreement of much of its meaning and undermine its provisions. In order to preserve the integrity of the agreement and enforce its provisions, the present claim will be sustained in its entirety. Contrary to Carrier's contentions, we do not find that the absence of a penalty provision or the fact that claimants were employed full time on the five dates in question deprives the Board of jurisdiction to award damages in this situation.

AWARD: Claim sustained. To be effective within 30 days.

Adopted at Philadelphia, PA July 28, 1989


Harold Weston, Chairman


Carrier Member


Employee Member