

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 88

Case No. **88**

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and

CSX Transportation, Inc. (Former Louisville and
Nashville Railroad Company)

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned Car Shop employees E. Malone and D. Bridges to paint the floor and metal support post in the Bearing Building at the south end of the New Car Shop at Radnor Yard in Nashville, Tennessee on March 1 and 4, 1996, instead of assigning furloughed B&B **Subdepartment employees** C. W. Gay, Jr. and R. C. Robinson [System File 44(10)(96)/12(96-1022) LNR].
2. As a consequence of the aforesaid violation, furloughed B&B Subdepartment employees C. W. Gay, Jr. and R. C. Robinson shall each be allowed sixteen (16) hours' pay at their respective straight time rates.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended; and
2. That the Board has jurisdiction over this dispute.

OPINION OF THE BOARD:

Rule 1, Scope, provides, in pertinent part, that:

Subject to the exceptions in Rule 2, the rules contained herein shall govern the hours of service,

working conditions, and rates of pay for all employes in any and all subdepartments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employes, and such employes shall perform all work in the maintenance of way and structures department.

Rule 41 provides, in relevant part, that:

(a) All Work which is done by Company forces in the construction, maintenance, repair, or dismantling of bridges, buildings, tunnels, wharves, docks, water tanks, turntables, platforms, walks, and other structures, build of brick, tile, concrete, wood, or steel, the painting of bridges, buildings, docks, platforms, walks, turntables, tanks and other structures, hand rails in buildings and on bridges, and the erection and maintenance of signs attached to buildings or other structures, shall be performed by employes of the bridge and building subdepartment.

The Bridge and Building Subdepartment exists, in relevant part, for the purpose of establishing a group of employees to paint buildings.

The present dispute involves a relatively limited painting assignment performed by Car Shop employees instead of by furloughed members of the Bridge and Building Subdepartment. The Agreement contains different categories of employees.

In accordance with Rule 1 and Rule 41, the painting of parts of the building structure constitutes core work typically performed by bargaining unit members such as the Claimants. Such work falls explicitly within the scope provision of the Agreement. As such, the present parties constitute the only parties necessary to resolve this disagreement. The assertion that the Car Shop employees had installed wheel bearings lacks a sufficient nexus to warrant the organization that represents Car Shop employees to be treated as an indispensable party to the present dispute.

The record omits any persuasive evidence that the use of bargaining unit members to perform the disputed painting function would have in any way complicated, disturbed, or undermined the alleged function of Car Shop employees to keep the specific area of the building dust free. In contrast to painting rolling stock and in the absence of more extensive information about the precise requirements of keeping an area dust free, the **record** fails to prove that the work of painting a building (floors and a metal support post) under these particular circumstances constitutes the core work of the Car Shop employees or arose as necessary incidental work that the Car Shop employees had an entitlement to perform to the exclusion of the Claimants. **The**

record omits any suggestion that an emergency situation had existed regarding the painting.


The Organization's decision not to progress to arbitration different cases under different circumstances involving this particular subject did not preclude the Organization from progressing the present dispute to arbitration. As a result of such different prior circumstances, the approach of the Organization did not establish acquiescence or constructive acceptance by the Organization of the Carrier's position. In the absence of any such type of an estoppel, the Organization retained the right to enforce the clear, explicit, unambiguous, and mandatory provisions of the Agreement in the context of the present matter.


Due to the clarity of the Agreement regarding the disputed work, any arguable past practice lacks relevance because a past practice becomes significant when an agreement is ambiguous, imprecise, or unclear. A past practice lacks relevance to change a clear provision of an agreement. Any change to the meaning and proper application of a clear provision of the Agreement is a matter for collective bargaining, not arbitration.

In summary, the record omits any basis for deviating from the presumptive validity and integrity of the jurisdictional arrangement developed by the parties. The assignment of the disputed work under **the circumstances** of the present controversy therefore violated the fundamental jurisdictional arrangement inherent in the scheme developed by the parties over an extended period of time. As a result, the Carrier's actions in the present case constituted a violation of the Agreement.

AWARD:

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 30 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 5/14/01