

SPECIAL BOARD OF ADJUSTMENT 1110

Award No. 91

Case No. 91

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 Carrier violated the Agreement when it assigned Carmen G. Hamblin, R. D. Daniels, J. Clark and B. Witherspoon to paint the metal support post at the Car Shop at Radnor Yard, Nashville, Tennessee on August 2, 1996 and assigned Carman B. Hardy to paint lockers in the New Car Shop on July 30, 1996 [System File 44(28)(96)/12(97-32) LNR].
2. As a consequence of the violations referred to in Part (1) above, B&B Foreman B. L. Warnack, Lead Carpenter R. W. DeLoach, Carpenter C. W. Gay, Jr. and Carpenter Helper R. C. Robinson shall each be allowed eight (8) hours' pay at their respective straight time rates and Carpenter C. W. Gay, Jr. shall be allowed an additional eight (8) hours' pay at his time and one-half rate.

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 employees in any and all subdepartments of the Maintenance of Way and Structures Department, represented by the Brotherhood of Maintenance of Way Employees, and such employees shall perform all work in the maintenance of way and structures department.

Rule 4, Rule 6, and Rule 9 contain certain provisions concerning seniority.

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 employees of the bridge and building subdepartment.

In the context of the referenced Rules, the record proves that 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 certain members of the Bridge and Building Subdepartment. In accordance with the referenced Rules, the disputed painting of a metal support post 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. No basis exists 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 any key function of Car Shop employees. In contrast to painting rolling stock and in the absence of any other material information, the record fails to prove that the disputed work 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.

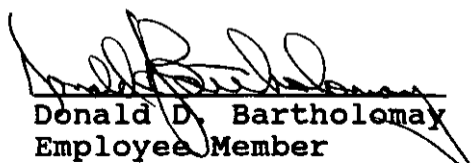
Due to the clarity of the Agreement regarding the disputed work, any arguable past practice lacks relevance because a past practice becomes significant when an agreement is ambiguous, imprecise, or unclear. A past practice lacks relevance to change a clear provision of an agreement. Any change to the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

A careful examination of the record indicates that insufficient evidence and detail exist that the Car Shop employees actually performed the disputed painting on the dates set forth in the Claim. In the absence of sufficient evidence that the Car Shop employees performed the disputed work as specified, no valid claim exists in the present matter. In particular, the relevant documentary evidence included in the record omits the names of the Car Shop employees who allegedly had performed the disputed work. In addition, the Claim concerning the lockers omits sufficient specificity and detail to provide an adequate basis to sustain the Claim.

AWARD:

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


Donald D. Bartholomay
Employee Member


Mark D. Selbert
Carrier Member

Dated: 5/14/01