

SPECIAL BOARD OF ADJUSTMENT NO. 287

PARTIES: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 4

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when it assigned other than Bridge and Building Mechanics to perform the work of painting three (3) Air Tanks at Washington, Indiana;

(2) B&B Mechanic George R. Taylor now be allowed eight (8) hours' straight time pay account of the violation referred to in part one (1) of this claim."

FINDINGS: The Third Party issue is raised here by the Carrier. We ruled on this point in the Award in Docket No. 1, and adopt the same position here.

The Carrier is charged here with violating the effective agreement "when it assigned other than Bridge and Building Mechanics to perform the work of painting three (3) air tanks at Washington, Indiana."

Organization relies heavily on Section (b), sub-section 6, paragraph (b) of the Scope Rule:

"(b) This Agreement does not apply to:

"6. The following work when performed by other than B&B forces:

"(b) Maintaining and painting material bins and tanks within store rooms or oil houses."

The air tanks in question are located between the Back Shop and the Coach Shop at Washington, Indiana. Organization notes these tanks were "not within store rooms or oil houses."

It is Carrier's contention, essentially, that the Organization has never before contended that this particular work of painting air tanks belonged to B&B forces; that Rule 138 of Carmen's agreement gives this work to shop crafts' employees. It offers in evidence Motive Power Department circular and bulletin to support its claim that employees under the Shop Crafts' agreement have done this work.

The same parties, the same type of claim, the same issues and the same argument were before the Referee in Award 8093 of the Third Division.

The contracting parties here, in that portion of the Rule previously quoted, explicitly excluded "maintenance and painting material bins and tanks within store rooms or oil houses."

Storage bins were involved in Award 8093; air tanks are involved here. These tanks are not "within store rooms or oil houses."

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It being a cardinal rule of contract construction that where an exception is specifically and expressly set forth, no other may be implied, a sustaining Award is here in order, as it was in Award 8093.

AWARD

Claim sustained.

(s) Edward A. Lynch
Edward A. Lynch
Chairman

(s) A. J. Cunningham
A. J. Cunningham
Employee Member

(s) T. S. Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Maryland, this
28th day of March, 1960.