Award No. 5250
Docket No. 5133-I
2-CUT-I-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

ROBERT GUNN, CARMAN PAINTER, PETITIONER

CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreements the Carrier improperly assigned Carmen Painter's duties to foremen, carmen, and B & B employes.

2. That the Carrier be ordered to compensate Carman Painter Robert Gunn eight hours pro-rata rate from October 5, 1964 to Octobe 30, 1964 inclusive.

3. That the Carrier be ordered to compensate Carman Painter Norman Eickstien eight hours pro-rata rate from November 2, 1964, to February 26, 1965 inclusive.

4. That the Carrier be ordered to compensate Carman Painter Robert Gunn eight hours pro-rata rate from March 1, 1965 until such time as claim is properly adjusted.

5. That the Carrier be ordered to re-instate Carman Painter Robert Gunn.

6. That Mr. Gunn and Mr. Eickstien be compensated for vacation pay and health and welfare premiums.

EMPLOYES' STATEMENT OF FACTS: The Cincinnati Union Terminal Company, hereinafter referred to as the Carrier, posted a bulletin to abolish the Carmen Painter's position held by Robert Gunn, hereinafter referred to as the claimant. The Carrier violated Rule 85, the agreement of May 14, 1946, Rule 73, and the precedented history of the Cincinnati Union Terminal Company. This dispute has been handled with the Carrier up to and including the highest Officer so designated by the Carrier, with the result that he has declined to adjust it.

POSITION OF EMPLOYES: On September 30, 1964, the Local Chairman wrote a letter to Master Mechanic E. A. Dryer advising him that the Carmen

Painter is entitled to protection against other crafts as well as against other Carmen in the performance of Carmen Painter's duties. The duties of this position has been fundamentally a practice since the first painter was hired over thirty-five (35) years ago, and this practice has not been abrogated by either party.

Rule 85 Revision of the Agreement reads:

> "Should the railroad company or the organization desire to revise these rules, a written statement containing the proposed changes shall be given and conference held within thirty (30) days to arrange details necessary to negotiate to a conclusion."

The agreement of May 14, 1945 (exhibit 5) entertains seniority preference for Carmen Painters over Carmen Mechanics and establishes the Painters as a class within the Carmen Crafts. The Cincinnati Union Terminal Company has disregarded the rights which has been long established and strictly maintained.

Rule 73 of the current agreement reads in part:

> "Painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); all other work generally recognized as painter's work under the supervision of the locomotive and car departments."

If Rule 73 of governing agreement is not probatively clear, the rule is firmly established by past practice.

The Carrier did not discontinue stenciling and painting but capriciously had the work performed improperly, (see page 1 of exhibit 6) where the old stencil dates were removed with a screw driver under the supervision of J. W. Walsh.

On page 3 of exhibit 4

> "Monday, October 19, 1964 tractor No. 5 was painted by B & B employes."

On page 9 of exhibit 6 under date of Saturday, October 31, 1964,

> "SOU 294 25" x 38" repaired corner post painted black B-R by C. Medley."

The Carrier did not concede or agree to any of the violations, but attempted to degrade the claim figuring on ¼ hour for each stencil job. Exhibit 18, 19, and 20 show that ½ hour for each stenciling job has been a rule of the Company and has never been refuted, or any exception taken to this standard charge of ½ hour per stencil job. Because of various factors, painting, surface conditions, location, type of work, and weather, this stenciling work more often than not takes over the standard allotted time of one half hour. It was also the duty of the Carmen Painter to do the stenciling turned over to him each day by the second and third trick supervisors. (See exhibits 31 and 32)

By abolishing the painter's position, the Carrier has opened the door to an overflow of violations that has and will continue to occur. The Carrier can

abolish this one job only by dividing the claimant's work among foreman, carmen, and other crafts. From the very beginning of this claim we have proved to your honorable board the Carrier arbitrarily intended to abort this job. It was not possible for the organization and it is not possible for me to observe all violations since General Chairman J. C. Bradley has verbally informed the claimant that the Carrier has not agreed to a joint inspection of the painting work which is actually being performed at the Cincinnati Union Terminal.

On January 11, 1965 the Local Chairman wrote to Master Mechanic E. A. Dryer requesting a sixty day extension of the time limit in order to secure from the claimant information and records necessary to properly process this claim. On January 18, 1965, Master Mechanic E. A. Dryer's reply was an abundance of questions. That, if answered may have resulted in a denial for a time extension and would have permitted this case to have been lost because of time limitations. On December 3, 1965, the claimant requested Mr. G. S. Gray, Manager, for a ninety day time extension from December 23, 1965, (exhibit 33). The Carrier had not the courtesy to reply until December 14, 1965. The claimant received this letter the 17th of December which permitted only six days for the claimant to prepare the sumation which is very little time since the claimant is completely unversed in these procedures. By doing nothing, it is apparent the Carrier had hopes of this case being disqualified because of time limitations.

The Carrier has denied this claim which was based on proper data and rigid controlling agreements and the proper procedure which has been the precedented history at the Cincinnati Union Terminal Company. I request your honorable board to sustain this claim in its entirety.

An oral hearing is not requested.

CARRIER'S STATEMENT OF FACTS: There is an agreement in effect revised September 1, 1949, with amendments up to date, between the Cincinnati Union Terminal Company and System Federation No. 150 Railway Employes Department AFL-CIO, Mechanical Section No. 2 thereof, which is controlling in the present dispute and which is hereby made a part of this dispute by reference thereto.

The Cincinnati Union Terminal is a union station facility which was placed in operation about April 1, 1933, and which is utilized as a unified passenger terminal in Cincinnati, Ohio by the Baltimore & Ohio Railroad, Chesapeake & Ohio Railway, Southern Railway System, New York Central System, Louisville & Nashville Railroad, Norfolk & Western Railway and Pennsylvania Railroad.

For many years this Carrier maintained a position of Painter under the Carman's Agreement, which performed that painting of passenger cars which the Carriers using the terminal facilities authorized the terminal to perform. The decision to paint or not to paint was made by the railroad owning the equipment and this terminal could only give that work to its employes to perform which it was authorized by the owning Carrier to perform while the equipment was on the terminal property.

After the painting of cars at the Cincinnati Union Terminal had gradually diminished until it ceased completely some time prior to this claim, the Painter was kept busy for a time on a program of repainting old baggage and mail trucks and painting of a number of newly acquired baggage and

"1. All claims or grievances arising on or after January 1, 1955, shall be handled as follows:

* * * * *

(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. **All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board** or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to ." (Emphasis ours.)

According to the foregoing rule, any proceeding before the Adjustment Board in the present claim instituted after December 22, 1965 is barred. Mr. Gunn was well aware of this fact as he so stated in his letter of December 3, 1965 (Carrier's Exhibit No. 11) when he asked for an extension of time limits. According to the last sentence of Section 1(c) of Article V of the August 21, 1954 Agreement (SUPRA) the 9 months' period **may be extended by agreement of the parties.** However, in the present claim the request of Mr. Gunn for an extension of time limits **was not agreed to by the Cincinnati Union Terminal Company.**

Mr. Charles C. McCarthy, Executive Secretary Second Division, N.R.A.B., notified this Carrier in letter dated April 5, 1966 (Carrier's Exhibit No. 14), that they had received Mr. Gunn's notice of intention to file an ex parte submission thirty days from April 5, 1966, and that Carrier was requested to file its submission with the Second Division within the same period of time, namely, on or before May 5, 1966.

POSITION OF CARRIER: It is the position of this Carrier that the claim submitted to the Second Division in letter dated March 22, 1966 (Carrier's Exhibit No. 13), is barred due to failure of claimant to comply with the mandatory time limit requirements of Article V of the Agreement of August 21, 1954. Without prejudice to our position this claim is barred, it is a fact that the record of handling on the property shows clearly that this Carrier did not violate the contract and that the duly authorized representative of the class and craft of Carmen of this Carrier, agreed that no violation existed and dropped the claim.

CLAIM IS BARRED

The claimant is covered by the effective Agreement which was revised September 1, 1949 with amendments thereto, between this Carrier and the employes represented by the Brotherhood of Railway Carmen of America functioning through System Federation No. 150 Railway Employes Department, AFL-CIO, Mechanical Section No. 2 The Memorandum Agreement between

mail trucks. Upon the completion of the program it was found that there was no longer a need for the position of Painter in the Car Department and it was abolished effective at end of tour of duty October 2, 1964 as shown by Carrier's Exhibit No. 1.

A claim was filed in letter dated November 25, 1964 (Carrier's Exhibit No. 2), which was denied in letter dated December 9, 1964 (Carrier's Exhibit No. 3).

The claim was appealed to Manager G. S. Gray, the final officer of appeals, in letter dated January 28, 1965 (Carrier's Exhibit No. 4), and was denied in letter dated March 23, 1965 (Carrier's Exhibit No. 5). A conference was held on April 8, 1965 and was confirmed in letter dated June 9, 1965 (Carrier's Exhibit No. 6).

In letters shown as Carrier's Exhibit Nos. 7, 8, 9 and 10, the General Chairman requested a joint check which developed that no painting work was being performed. Although in his original letter of claim (Carrier's Exhibit No. 2) Local Chairman Leflar alleged that the stenciling of air dates, packing dates, etc., was reserved exclusively to the Painter, the past practice on this and other railroads does not support his claim. Because this Carrier had no Carman Painter assigned to work on the second or third shift or on Saturdays and Sundays, other carmen on duty at those times performed such work as had to be performed, and also performed stenciling the dates on journal boxes which they repacked, dates on which air brakes were cleaned, etc. In the final stage of handling, the General Chairman admitted that stenciling air dates, packing dates, etc., on cars was considered to be Carman's work and was not exclusively reserved to Painters. As a result of the conferences with the General Chairman it was developed **that in fact no Painter's work was being performed on the property** and it was the Carrier's understanding the claim would be dropped.

Nothing more was heard in regard to this claim until December 9, 1965 when a letter dated December 3, 1965 (Carrier's Exhibit No. 11) was received from Mr. Robert Gunn, stating that he found it necessary to file and process his own claim to the National Railroad Adjustment Board and requesting a ninety day extension of the time limit within which the claim was required to be submitted to the National Railroad Adjustment Board.

The Carrier was surprised to receive this letter as it was our understanding that the Organization had agreed that we had not and were not violating the Carmen's Agreement. We did not agree to give Mr. Gunn an extension of time and instead informed him that the Carrier and the Organization had determined that no violation of the Carmen's Agreement existed. (Carrier's Exhibit No. 12)

The next development came on March 23, 1966 when a copy of a letter dated March 22, 1966 (Carrier's Exhibit No. 13) addressed to the Executive Secretary of the Second Division, N.R.A.B., was received in which Mr. Gunn advised of his intention to file an ex parte submission on April 21, 1966. Inasmuch as the final denial by the highest officer designated by the Carrier to handle such disputes was made in letter dated March 23, 1965 (Carrier's Exhibit No. 5), the proceedings instituted with the Second Division N.R.A.B. in Mr. Gunn's letter dated March 22, 1966 are barred by the clear terms of Section 1(c) of Article V of the Agreement of August 21, 1954 which states:

these employes and this Carrier dated August 21, 1954 contains an Article V which provides time limits for presenting and progressing claims or grievances. Section 1(c) of Article V reads as follows:

> "(c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. **All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board** or a system, group or regional board or adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to ." (Emphasis ours.)

In the present claim, the decision of the highest designated officer of appeals was given in letter dated March 23, 1965 (Carrier's Exhibit No. 5) and the 9 months' period expired December 22, 1965. Mr. Gunn requested an extension of the time limits in letter dated December 3, 1965 (Carrier's Exhibit No. 11) but the Carrier did not agree to this request and the extension was not granted. Mr. Gunn's letter of December 3, 1965 shows that he was well aware of the provisions of the Time Limit of Claims Rule.

When Mr. Gunn submitted his claim to the Second Division in letter dated March 22, 1966 (Carrier's Exhibit No. 13) this claim was barred under the clear terms of Article V section 1(c) of the Agreement of August 21, 1954.

In such situation, that which was said by the Second Division in Award No. 4072 is controlling:

> "The record shows the petitioner instituted proceedings before this Division of the Board on March 27, 1962, appealing from a decision of the highest designated officer of the carrier rendered on September 25, 1959. The claim is barred by the provisions of Rule 32(e) of the controlling agreement.
>
> AWARD
>
> Claim dismissed."

Also in Second Division Award No. 3569 this Board said:

> "The record shows the petitioner instituted proceedings before this Board on May 25, 1960, appealing from the decision of the highest designated officer of the carrier which was rendered on February 6, 1959. This claim is barred by the provisions of Rule 19(c) of the controlling agreement.
>
> AWARD
>
> Claim dismissed."

The Third Division said in Award No. 9321 that:

"Opinion of Board: The record discloses that this claim was progressed to the highest officer on the property designated to handle claims and grievances, and was denied by him in writing on September 2, 1958. It was not appealed to this Board until July 6, 1959, over ten months later, which was not within the time required by Section 1(c) of Article V of the National Agreement of August 21, 1954, to which the Brotherhood and Carrier are parties. That section provides that all claims and grievances are barred unless proceedings are instituted here within nine months after final denial on the property. Consequently this Board cannot consider it on the merits."

Also in Third Division Award No. 11483 the Board said:

"Opinion of Board: The Carrier has shown in its Submission that this claim was denied on November 20, 1956, by the Carrier's highest officer designated to handle such matters; also that notice to file an ex parte Submission in this case was not made by the Employes until November 19, 1958.

The lapse of more than nine months between those dates bars this claim from consideration by this Board under the provisions of Article V, Section 1(c) of the August 21, 1954 Agreement."

In the present claim, the claimant failed to institute proceedings before the Second Division N.R.A.B. within the mandatory time limits prescribed in Section 1 paragraph (c) of the Agreement of August 21, 1954, and therefore this claim is barred as provided therein. Carrier respectfully requests that claim be denied or dismissed for the reasons above stated.

As it is impossible for this Carrier to know the disposition the Board will make of its procedural objection outlined heretofore, and without waiver of Carrier's position this claim is barred under the applicable time limit on claims rule, and without in any way prejudicing its position in this regard, this Carrier will discuss the merits of the claim.

MERITS OF THE CLAIM

The Cincinnati Union Terminal is a union station facility which was placed in operation about April 1, 1933, and which is utilized as a unified passenger terminal in Cincinnati, Ohio by the Baltimore & Ohio Railroad, Chesapeake & Ohio Railway, Southern Railway System, New York Central System, Louisville Railroad, Norfolk & Western Railway and Pennsylvania Railroad. The Cincinnati Union Terminal Company is a corporation and is a Carrier under the Railway Labor Act as amended. As a Carrier under the Railway Labor Act this Company is required to make and maintain agreements concerning rates of pay, rules and working conditions, with the duly designated authorized representatives of its employes.

This Carrier is a party to an agreement, a copy of which is on file with the National Railroad Adjustment Board, designated as follows:

"AGREEMENT
Between
THE CINCINNATI UNION TERMINAL COMPANY
and
all that class of employes represented
by
SYSTEM FEDERATION No. 150
RAILWAY EMPLOYES DEPARTMENT, A. F. of L.,
MECHANICAL SECTION No. 2
THEREOF:

1. International Association of Machinists.

2. International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.

3. International Brotherhood of Blacksmiths, Drop Forgers and Helpers.

4. Sheet Metal Workers' International Association.

5. International Brotherhood of Electrical Workers.

6. Brotherhood Railway Carmen of America.

Revised September 1, 1949"

The controlling Agreement Revised September 1, 1949 as amended, contains a Rule 73 as follows:

"RULE 73 — CLASSIFICATION OF WORK

(a) Carmen's work shall consist of building, maintaining, dismantling (except all-wood freight-train cars), painting, upholstering and inspecting all passenger and freight cars, both wood and steel, planning mill, cabinet and bench carpenter work, pattern and flask making and all other carpenter work in shops and yards, except work generally recognized as bridge and building department work; carmen's work in building and repairing motor cars, lever cars, hand cars and station trucks, building, repairing and removing and applying locomotive cabs, pilot beams, running boards, foot and headlight boards, tender frames and trucks; pipe and inspection work in connection with air brake equipment on freight cars; applying patented metal roofing; operating punches and shears doing shaping and forming; work done with hand forges and heating torches in connection with carmen's work; painting with brushes, varnishing, surfacing, decorating, lettering, cutting of stencils and removing paint (not including use of sand blast machine or removing vats); all other work generally recognized as painter's work under the supervision of the locomotive and car departments, except the application of blacking to fire and smoke boxes of locomotives in engine houses; joint car inspectors, car inspectors, safety appliance and train car repairers; oxyacetylene, thermit and electric welding on work generally recognized as carmen's work and all other work generally recognized as carmen's work.

(b) It is understood that present practice in the performance of work between the carmen and boilermaker will continue."

For many years this Carrier maintained a position of Painter under the Carman's Agreement which performed that painting of passenger cars which the Carriers using the Terminal facilities authorized the Terminal to perform. The decision to paint or not to paint was made by the railroad which owned the equipment. The Terminal could only give that work to its employes to perform which it was authorized by the owning carrier to perform while the equipment was on the Terminal property. The principle involved is that which was expressed in Third Division Award No. 5774 where the Board said:

"Petitioner averred Carrier violated Schedule Rules 1 and 3 by removing said above mentioned and described work from assignments given to Claimants. In particular Petitioner averred the last above mentioned class of work legally belonged to Claimant. We think the point thereby raised is: does the Schedule give to Petitioner a right to compel Carrier to maintain work it has acquired by contract? We do not think so in that the consideration supporting the Schedule only goes so far as to cover work which Carrier has to offer, certainly that which came to Carrier from a third party may be discontinued by said party."

As was said in Third Division Award No. 8076:

"Such work is reserved by the Agreement to Respondent Carrier's employes can only be that which is within the Carrier's power to offer."

Due to the decline of the railroad passenger business in recent years, the work of painting cars gradually disappeared and the position of Painter was used on a program of repainting old mail and baggage trucks and painting of newly acquired baggage and mail trucks. When this program was completed in 1964, there no longer was a need for a Painter and in Bulletin #137 dated September 25, 1964, the Carrier abolished the position of Painter effective at end of tour of duty October 2, 1964 (Carrier's Exhibit No. 1). This railroad has a right and duty to the public, its employes, and its stockholders to operate its business as efficiently as possible. Certainly the continuance of unnecessary and superfluous positions cannot be condoned or encouraged in these days of rising costs and disappearing revenues. The National Railroad Adjustment Board has recognized many times that the number of positions employed by carriers is not static and may increase or decrease as the requirements of the service may indicate. In Third Division Award No. 4353, the National Railroad Adjustment Board held that:

"There is no doubt that the work and positions which were transferred to the Nickel Plate when performed by Carrier employes came within the coverage of the Scope and Seniority rules of the current Agreement. Does that mean that during the life of the current Agreement the same may not be removed except by negotiation? In our opinion, it does not. The Scope and Seniority rules of the Agreement are not static in the sense that they attach to work and positions in being at the time of the signing of the Collective Bargaining Agreement and to nothing more nor less. On the other hand, they are ambulatory in the sense that they follow along with the operations of Carrier and attach and detach themselves to work and posi-

tions which are of a class defined therein as the operations of the Carrier require and thus with increasing needs, the amount of both covered work and positions expands and with decreasing needs contracts. If this were true, there would be no need for rules concerning establishment of new positions nor for rules concerning abolishment of existing positions. Now, each time a new position is created, negotiation is not necessary to bring it within the provisions of the Scope and Seniority rules, nor is it necessary to negotiate each time a position is abolished. Hence, the seemingly plausible argument of the employes that work or positions negotiated into an Agreement or covered by its rules can only be removed through the same procedure, to-wit; negotiation and agreement is not entirely tenable. When the need for the performance of work disappears, it is removed from the Agreement by the Agreement's own terms.

The effect, generally speaking of the Scope and Seniority rules is to assure that any work necessary in performing the functions of carriers belongs to such classes of employes as are protected by collective agreements. It is because of this principle that penalties have been assessed against carriers in farming out work covered by agreements and likewise carriers have been held in violation when new work not in existence as of the date of agreements, but of a class defined therein has been assigned to employes outside the said agreements."

The Local Chairman of the Brotherhood of Railway Carmen of America, representing Mr. R. Gunn who was the incumbent of the position at the time it was abolished, instituted claim in letter dated November 25, 1964 (Carrier's Exhibit No. 2) and contended that the performance of stenciling work by Carmen subsequent to the abolishment of the position of Painter was in violation of the Agreement.

Although Item 1 of the Statement of Claim submitted to the Second Division by Mr. Gunn alleges that Carrier improperly assigned Carmen Painters' duties to Foremen, Carmen and B&B employes, we point out here that during the handling on the property, neither the Organization nor Mr. Gunn ever made any attempt to support their allegation insofar as the foremen or B&B employes were concerned. Their efforts were confined solely to the alleged improper transfer of stenciling work to Carmen.

However, in conferences and subsequent letters (Carrier's Exhibit Nos. 3 through 10, inclusive) it was established that Carmen had been stenciling cars for many years both before and after the position of Painter was abolished (there was no painter on the second and third trick and none on any trick on Saturday or Sunday), that such work (even using the Organization's figures) averaged only 4.35 hours per day of twenty-four hours (less than 1½ hours per eight-hour shift) which was not sufficient to justify the retention of a position of Painter, and that the Organization recognized that stenciling of cars is considered as Carmen's work on railroads throughout the country and is not reserved to positions of Painters.

As information to this Board, the Interstate Commerce Commission requires railroads to inspect cars to determine if periodic overhaul of air brake valves is due, if journal packing around the wheel bearings has been renewed according to I.C.C. time limits, if water tanks have been flushed periodically, etc., and when these items are completed the date the work was done is stenciled

in a designated place on the car. After the Carman has performed the work he stencils the letters "C.U.T." and the date in the designated place and the next car inspector figures the time limits from that date in determining when the next overhaul, repacking, flushing, etc., is due. To stencil this information, our Carmen use a spray can of black quick-drying paint to black out the old date and interlocking brass stencils with a spray can of white paint to stencil on the new date.

When a Carman stencils the date and location on the car this does not constitute the work he is performing, it is merely a record of work he has performed. All craftsmen record the work they perform in various ways. Electricians and Boilermakers must complete Form 237 which is a record of the various inspections and work performed on locomotives, a copy of which is placed in the cab of the locomotive, and all such employes report the work they have performed on their daily time cards. Interstate Commerce Commission rules and regulations require that these records of work performed be made by the employe who performs the work. From the required records, the Commission's inspectors can determine who performed, or failed to perform, the required work on this equipment.

Subsequent to the abolishment of the position of Painter and during the handling of this claim on the property, a check was make which showed that no painting work specifically reserved to Painters was being performed. The check did show that dates were being stenciled on cars but the General Chairman of the Brotherhood of Railway Carmen admitted that this was considered to be Carmen's work not reserved specifically to Carmen Painters. During conferences the fact that Carmen had performed such work in the Cincinnati Union Terminal before and after the abolishment of the Painter's position was discussed as was Second Division Award No. 3512 in which the Division said:

> "**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:
>
> The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.
>
> The parties to said dispute were given due notice of hearing thereon.
>
> The weight of the evidence shows that the only work previously performed by claimant Haenel, a painter in the carman's craft, which since his furlough has been performed by other carmen who are on a separate seniority roster at Columbia, South Carolina, is the stenciling of lightweight and date freight cars are re-lightweighed, location and date freight car journal boxes are repacked, and possibly other stencil work of a similar character. Painting as such and the cutting of stencils were discontinued at this location at or prior to the time of claimant's furlough.
>
> The subject stenciling work is not within the exclusive jurisdiction of painters in the carman's craft. The transfer of the involved

work to other carman under the subject circumstances was not an agreement violation. A denial award is indicated.

AWARD

Claim denied."

This Carrier and the duly authorized representative of the craft and class of Carmen on this property were in agreement that the contract was not violated. If we did not agree, the Brotherhood would have submitted the claim to the Adjustment Board, and the fact that they did not, we believe is of great significance. **We have here a situation where two parties to a contract are in agreement as to its meaning and in addition have an interpretation from the Second Division in Award No. 3512 which supports the understanding and agreement of the parties.**

CONCLUSION

In the foregoing Submission we have shown that this claim is barred due to the failure of the Claimant to comply with the mandatory time limit requirements of Article V of the Agreement of August 21, 1954. The record shows that the Claimant was well aware that under the time limit rule he was required to institute proceedings before the Second Division National Railroad Adjustment Board on or before December 22, 1965, and that he failed to do so.

Without prejudice to our position the claim is barred, the record shows that the work of the position of Painter no longer exists on the property of the Cincinnati Union Terminal Company and that no work exclusively within the jurisdiction of Painters was given to anyone else subsequent to the abolishment of the position of Painter.

In such circumstances, the position was properly abolished, this Carrier did not violate the Agreement as alleged by the Claimant and we respectfully urge this Board to follow its precedent Award No. 3512 and deny this claim in its entirety.

All data submitted in support of Carrier's position has been made known to the Employes and made a part of this particular question in dispute.

Oral hearing is not requested.

(Exhibits not reproduced.)

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Carrier's highest designated officer of appeals denied the claim in a letter dated March 23, 1965. The claim was submitted to the Second Division in

a letter dated March 22, 1966; twelve months later. It is barred under Section 1(c) of Article V of the August 21, 1954 Agreement which provides that claims must be instituted before the appropriate division of the National Railroad Adjustment Board within nine (9) months from the date of the decision of the Carrier's highest designated officer. The claim should have been presented to this Division of the Board by December 22, 1965.

It is unfortunate that Claimant is not experienced in the procedures prescribed by the Railway Labor Act and is not fully aware of the time limits contained in Article V of the August 21, 1954 Agreement. Such inexperience and unawareness is no valid reason to ignore the explicit provisions of the Act and the Agreement. Carrier was under no obligation to extend the time as requested by the Claimant. Even then he had six days to institute the claim with the Board which he did not do until three (3) months later.

On the basis of the record, we have no alternative but to dismiss the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1967.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.