

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

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

(1) The Carrier violated the Agreement when, beginning on or about November 6, 1961, it assigned or otherwise permitted other than B&B Painters to perform the work of painting the recreation room, dining room, toilet room, entrance hall, kitchen and storage room the so-called "engineers" and firemen's bunk house at Ogden Avenue, Clyde, Illinois.

(2) B&B Paint Foreman O. J. Moore and B&B Painters A. T. Knott, A. C. Williams and I. L. Fair each be allowed fifty-six (56) hours' pay at their respective straight-time rates account of the violation referred to in Part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: The bunk house in question is a Carrier-owned four story brick building located at Ogden Avenue, Clyde, Illinois. A portion of this building is used by the Carrier as recreational and sleeping facilities for its enginemen. Another portion of said building is leased to the Central Commissary Company which operates a restaurant, primarily because of the Carrier's contractual obligation to make such facilities available to its train service employees.

Beginning on or about November 6, 1961, the Carrier permitted an employe of the Central Commissary Company, who holds no seniority rights under the provisions of this Agreement, to paint the interior of the aforementioned building.

The painting work is of the nature and character that has been customarily and traditionally assigned to and performed by the Carrier's B&B forces.

The claimants were available, willing and well-qualified to have performed the subject work, had the Carrier so directed.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Carrier owns a building located at the intersection of Ogden Avenue, 31st Street and 59th Avenue, Cicero, Illinois. This building is located off of Carrier's right-of-way. The building is leased to the Central Commissary Company who operate it as a public restaurant. This building was first leased to the Central Commissary Company on September 18, 1951 for a five year period, and the lease has subsequently been renewed by indenture at five-year intervals. Prior to 1951 the building was leased to a predecessor company who also operated it for the same purpose as does the Central Commissary Company. The lease provides that the tenant shall, at his own expense, make any changes to adapt and to maintain the leased premises for the purpose for which leased. The portion of the building leased to the Commissary Company which is involved in this claim consists of the restaurant and facilities occupying the entire first floor of the four-story brick building.

The Central Commissary Company assigned one of their employees to paint the recreation room, dining room, toilet room and entrance hall on the first floor of the building involved. The rooms painted are all part of the restaurant. The painting was done at the expense of the tenant and without the knowledge of any Carrier officer. Such work was not performed on November 6, 1961 as alleged in the Statement of Claim; also, the kitchen and storage rooms were not painted at any time in 1961 or 1962, as alleged in the Statement of Claim.

The schedule of rules agreement between the parties, effective September 1, 1949, and amendments thereto including the August 21, 1954 Agreement are by reference made a part of this submission.

OPINION OF BOARD: Our well-settled rules of procedure require that we limit our consideration to the issues properly raised on the property. NRAB Circular No. 1, Award 11128 and others.

The original claim, a penciled note to Carrier's Superintendent in Chicago, alleges, in substance, that "on or about November 6, 1961 . . . the toilet room, hall, dining room, recreation room and kitchen and storage rooms . . . of the bunk house at Clyde, Ill. . . . was painted . . . by other than B&B Painters. Now this work has always been done by B&B Paint Gangs." Subsequent handling on the property is documented only by two letters. The first from Superintendent Zadnichek denied the claim on the grounds that the property in question was under lease to Central Commissary Company "for their own use" and that the lease put the responsibility for maintenance on the lessee. The second letter is of like tenor. The allegations of fact upon which the denial of the claim was based were not challenged on the property by Claimants. Under the authority of Award 4783 we hold that since the record reflects a lease of property for the use of lessee and not for the railroad, maintenance work done by lessee in fulfillment of its obligation is not within the scope of the Agreement between Claimants and Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1966.