NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Electricians)

BURLINGTON NORTHERN, INC.
(Formerly Great Northern Railway)

DISPUTE: CLAIM OF EMPLOYES:

1. That in violation of the Agreement of September 2, 1969, the Carrier improperly denied Electricians William Steinauer, Louis Palmerio, and Clarence Slereth compensation for paid holidays in accord with the said Agreement.

2. That accordingly, the Carrier be ordered to compensate the aforementioned Electricians at straight time rate for the following holidays:

William Steinauer – January 1, 1968 (New Year's Day) and September 2, 1968 (Labor Day) – total of 16 hours.

Louis Palmerio – September 2, 1968 (Labor Day), December 25, 1968 (Christmas Day), and January 1, 1969 (New Year's Day) – total of 24 hours.

Clarence Slereth – May 30, 1969 (Decoration Day) and July 4, 1969 (Independence Day) – total of 16 hours.

EMPLOYES' STATEMENT OF FACTS: King Street Passenger Station was a facility jointly owned by the Great Northern Railway Company and the Northern Pacific Railway Company at the time this dispute arose. Shopcraft employes at King Street Passenger Station, including employes of the electrical craft, were covered by the same schedule agreement as covered other employes of the former Great Northern Railway Company which has since been merged into the company now known as the Burlington Northern, Inc., hereinafter referred to as the carrier.

Electricians William Steinauer, Louis Palmerio and Clarence Slereth, hereinafter referred to as the claimants, are former Pullman Company em-

of said notices between the carriers and the employes of such carriers. Any benefits or obligations flowing to these claimants could only accrue to them as employes of The Pullman Company prior to August 1, 1969. However, even if the September 2, 1969 Agreement were applicable to these claimants as employes of The Pullman Company, this carrier cannot be required to assume such obligations which may have accrued to them as a result of their employment with another company prior to their entry into the service of this carrier.

Nothing in the January 26, 1966 Agreement pertaining to the cancellation of the Uniform Service Contract between Pullman and the participating Carriers contains any requirement for the withdrawing carrier to take over wage payments applicable to periods of employment by and service performed for The Pullman Company. The organization's quotation of the words "follow the work on an equitable basis" from Section 2 thereof does not support their claim. The expression "follow the work" is clear and unambiguous. Its relationship to the withdrawing carrier is prospective and not retroactive.

The carrier sums up its position as follows:

1. The Claim has not been progressed to the proper tribunal for a decision.

2. The January 26, 1966 Agreement is the basic agreement with respect to withdrawing from the Uniform Service Contract with Pullman and does not provide for assuming any back pay for wages, vacations or holidays for Pullman Company employes.

3. The September 2, 1969 Mediation Agreement A–8488 was not applicable to Pullman employes, such as the three claimants in this case; consequently, the benefits of this agreement only become applicable after they enter the service of the carrier on August 1, 1969, for periods subsequent thereto.

4. The Carrier has fulfilled all of its obligations to these Claimants by employing them on August 1, 1969 and applying all the applicable rules governing hours of service, rates of pay and working conditions subsequent to the initial day of their employment on August 1, 1969.

For these reasons, the claim must be dismissed and/or denied.

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 this dispute waived right of appearance at hearing thereon.

Petitioner seeks holiday pay for the three claimants. Said benefits were allegedly earned in 1968 and the first seven months of 1969 pursuant to the terms of an agreement dated September 2, 1969 (Mediation Agreement between National Railway Labor Conference and the Eastern, Western and Southern Carriers Conference Committees and the Railway Employes' Department, AFL–CIO.

Until July 31, 1969, the claimants were in the employ of the Pullman Company and performed services at the King Street Passenger Station, Seattle, Washington, which was jointly owned by the Great Northern Railway Company and the Northern Pacific Railway Company, pursuant to a Uniform Services Contract between their Employer and the joint owners of the facility. They were covered by a comparable agreement between their Employer and the Petitioner as that between the Petitioner and the Great Northern Railway with reference to terms and conditions of employment for employes in their craft or class.

In February, 1969, the Great Northern Railway gave due notice that it was withdrawing from its Uniform Service Contract with the Pullman Company effective August 1, 1969. In accordance with an agreement with the Petitioner and other shop craft unions, set forth in part herein below, the Great Northern Railway offered employment with it to the claimants at the King Street, Seattle, Washington facility. This was accepted by the claimants, and they entered the Great Northern's direct employ on August 1, 1969.

Several years prior to the above referred to events, application was made to the Interstate Commerce Commission by a number of carriers that they be granted authority to merge their properties and franchises and establish a new company. Great Northern Railway and Northern Pacific Railway were participants in such plan. Negotiations were undertaken between the representatives of the carriers and spokesmen for Unions in the Railway Employes' Department, AFL–CIO, with which the Petitioner Organization herein is affiliated which resulted in an "Agreement for Protection of Shop Craft Employes in event of Great Northern Pacific and Burlington Lines Merger." Said agreement, by its terms was to be effective January 2, 1966, and was to take effect when the proposed merger was consummated. The Petitioner Organization herein was signatory thereto. The merger resulted in the creation of the Burlington Northern, Inc., the Respondent carrier herein, and was consummated on March 3, 1970.

The basic question to be determined is whether the claimants met the requirements set forth in "Article II–Holidays" of the Mediation Agreement, dated September 2, 1969, between certain carriers and organizations representing their employes. (Case No. A-8488.) The Pullman Company was not one of the contracting parties to said Mediation Agreement. In its effort to establish the status of the claimants, the Petitioner cites the Merger Agreement effective January 2, 1966 and the January 26, 1966 Agreement, for the protection of Pullman Company employes who would be adversely affected by withdrawal of Uniform Service Contracts by the carriers party thereto. The Merger Agreement defines "present employes" who were to be protected by its terms. As to whether their "present employe" status at the time of consummation of the merger relates back to the period prior to

their being placed on the payroll of Great Northern Railway's payroll or whether that status commenced on August 1, 1969 is a fundamental facet of the dispute, and may only be resolved in accordance with the terms of the Merger Agreement. That Agreement specifically and clearly divests this Board of any jurisdiction to determine disputes with respect to interpretation or application of any of its provisions. Section 9 reads in part as follows:

> "For purposes of this Agreement, Section 13 of the Washington Job Protection Agreement shall be inapplicable, and the following provision inserted in lieu thereof:
>
> In the event any dispute or controversy arises between the said carriers or the New Company and any labor organization signatory to this Agreement with respect to the interpretation or application of any provision of this Agreement or of the Washington Job Protection Agreement (except as defined in Section 11 thereof) or of any implementing agreement entered into between said carriers or the New Company and individual labor organizations which are parties hereto pertaining to the said transactions, or a dispute over the failure to make, or the terms to be included within, an implementing agreement, which cannot be settled by said carriers or the New Company and the labor organization or organizations involved within thirty (30) days after the dispute arises, such dispute may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within ten days, select a member of the arbitration committee and the members thus chosen shall endeavor to select a neutral member who shall serve as Chairman. . . . Should the members designated by the parties be unable to agree upon the appointment of the neutral member within ten days, either party may request the National Mediation Board to appoint the neutral member. . . ."

The January 26th, 1966 Agreement provides:

> "ARTICLE I.
>
> Section 1. In the event a carrier now participating in Pullman activities as a party to the Uniform Service Contract between certain railroad carriers and the Pullman Company, and who accepts the provisions of this Agreement, withdraws from such Pullman activities or such contract, employes of such carrier and of the Pullman Company deprived of employment or displaced as a result of such withdrawal will be afforded all the protective benefits of the September 25, 1964 Agreement (except separation allowance as provided in Section 7 of said agreement), and it will be the responsibility of the carrier or carriers whose withdrawal has resulted in such adverse effect to assume the burden of affording such protection.
>
> Section 2. Pullman employes who transferred with the work to the withdrawing carrier will have their seniority dovetailed in a manner which will permit affected employes to follow the work

on an equitable basis. Such employes will be afforded all the protective benefits of the September 25, 1964 Agreement (except separation allowance as provided in Section 7 of said agreement). Implementing agreements for said employes shall be negotiated with the withdrawing carrier for this purpose."

The Petitioner Organization and the Respondent Carrier were unable to effectuate the last sentence of Section 2 to date. Accordingly, determination of any disputes arising under the January 26, 1966 agreement must be resolved in the manner provided therein. Such provision reads:

"ARTICLE II.

Section 5. Any disputes will be handled in accordance with Article VI – Resolution of Disputes – of the Mediation Agreement dated September 25, 1964, . . ."

The pertinent clause of the referred to Mediation Agreement dated September 25, 1964 reads:

"ARTICLE VI.

RESOLUTION OF DISPUTES

Section 1. Establishment of Shop Craft Special Board of Adjustment.

In accordance with the provisions of the Railway Labor Act, as amended, a Shop Craft Special Board of Adjustment, hereinafter referred to as 'Board', is hereby established for the purpose of adjusting and deciding disputes which may arise under Article I, Employe Protection, and Article II, Subcontracting, of this agreement. **The parties agree that such disputes are not subject to Section 3, Second, of the Railway Labor Act, as amended.** (Emphasis ours.)

Section 8. Jurisdiction of Board.

The Board shall have **exclusive jurisdiction** over disputes between the parties growing out of grievances concerning the interpretation or application of Article I, Employe Protection, AND Article II, **Subcontracting.**" (Emphasis ours.)

Although the Petitioner stressed the primary applicability of the September 2, 1969 agreement to its claim, in its submission it states:

"The agreement of September 2, 1969 in conjunction with the Agreements of January 2, 1966 and the Agreement of January 26, 1966 is controlling."

It is eminently clear that interpretation and application of the 1966 agreements is essential before the 1969 agreement can be invoked in behalf of the claimants. The parties having contracted to place such matters before forums expressly created for such purposes, this Board is without jurisdiction to act thereon. (Second Division Awards 5667 (Ives), 6209 (Coburn) and 6081 (McGovern)).

The findings of this Division shall not be construed or interpreted as being prejudicial to any rights which claimants may institute, progress or appeal to another tribunal or tribunals having original or appellate jurisdiction in the premises, nor is Carrier's right to defend prejudiced by its appearance before this Division (Award 5667 (Ives)).

AWARD

Claim is disposed of in accordance with the foregoing findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February, 1972.

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