NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20633
THIRD DIVISION Docket Number MW-20598

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Inc.

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

(1) The Carrier violated-the Agreement when it assigned the work of repairing Hyster BN-707, including pick up and delivery, to Hyster Sales Company at Portland, Oregon (System File P-P-109C/MW-84(c)-1/10/73).

(2) The Carrier further violated the Agreement when it did not give the General Chairman prior written notification of Its plan to assign said repair work to outside forces.

(3) The Carrier now allow Traveling Maintainers C. Anderson, R. Robertson, C. Dykman and C. Hagey thirty (30) hours of straight time pay each.

OPINION OF BOARD: Claimants are regularly assigned travelling Equipment Maintainers within the Roadway Equipment Repair Shop Sub-Department at Vancouver, Washington; they are former S.P.& S. Employes. On September 11, 1972 Carrier contracted with the Hyster Sales Company in Portland to pick up and repair a Hyster BN 707 forklift which was assigned to the Car Department at Albany, Oregon, on the former S.P. & S. Petitioner alleges that the work in question was completed on October 13, 1972 and required I.20 hours of labor. It is contended that the work either should have been assigned to Maintainers covered by the applicable Agreement, or in accordance with the note to Rule 55 the Organization should have been notified of Carrier's Intent to contract the work.

Petitioner alleges a violation of the Agreement, particularly Rules 1, 55 M and 69 C. Rule 1 C. provides:

> "C. This Agreement does not apply to employes in the Signal, Telegraph and Telephone Maintenance Departments, nor to clerks. The sole purpose of including employes and sub-departments listed herein is to preserve pre-existing rights accruing to employes covered by agreements as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S railway companies prior to date of merger; and shall not

"operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging companies which were in effect prior to the date of merger."

Rule 55. M. is also relevant:

"RULE 55. CLASSIFICATION OF WORK

* * * * *

M. Traveling Maintainer and Maintainer Mechanic.

An employe skilled in and assigned to building (if not purchased) repairing, dismantling or adjusting roadway machine equipment and machinery, and on former SP&S certain repairs to automotive equipment."

Carrier first raises the question of third party interest in this dispute: the International Association of Machinists. The record indicates that the Machinists were notified by this Division and responded; there is no impairment of the Board's jurisdiction in this dispute.

Petitioner argues that for many years the work of repairing the equipment in questionwas performed by Maintainers in the Vancouver Equipment Repair Shop. Further Rule 1 C was intended to preserve the work performed by Maintenance of Way employes under the prior S.P.& S. Agreement. It is contended that the Hyster is automotive equipment and is covered by Rule 55M supra. Petitioner also cites prior Awards dealing with similar issues between the same parties in denying Carrier's exclusivity arguments.

Carrier states that the basic issue for resolution is whether there is any rule or agreement conferring exclusive rights to performthe repair work on the Hyster to Maintenance of Way Department employes. Carrier contends that the equipment is not a Roadway Equipment Machine and is not covered in the Scope Rule. Carrier argues that the Hyster is a fork lift used in the shop for moving material and is neither roadway equipment nor automotive equipment as contemplated in Rule 55M. Carrier also states that Hysters are not included in Rule 64 "Machine Operation Department" in the former S.P. & S. Agreement and therefore such work cannot be construed as being carried forward into the Burlington Northern Agreement under Rule 55 M. Carrier also alleges that the work is not customarily performed by employes in the Maintenance of Way Department. In its submission Carrier stated:

" ... the repair of forklifts and similar shop and warehouse equipment under circumstances similar to those existing at Albany on the date in question has frequently been assigned to non-Maintenance of Way employes. Such work has sometimes been performed by Burlington Northern machinists, depending upon the location and circumstances, and on some occasions by outside contractors."

Most of the issues and arguments raised in this dispute have been before this Board on a number of occasions, involving the same parties and Agreements. For example in Award 19924 we found that both parties conceded that the Rule 55 is clear and unambiguous and "....classifies the work coming under the scope of the Agreement." Additionally, with respect to the question of exclusivity, the Board stated in Award 20338:

". ..Additionally, we observe that the Note to Rule 55 specifically alludes to work which is customarily performed by the employes rather than the frequently argued doctrine involving work exclusively performed."

The question of whether a Hyster fork lift truck may be classified as automotive equipment is significant in this dispute. It is clear that this vehicle is used to move equipment and materials and not personnel. In Award 19898 we found that a "Chore Boy", a three wheeled vehicle resembling a golf cart and used to transport both materials and personnel, is automotive equipment, even though not used on a road or highway. The Hyster, which in industry generally is referred to as a "fork lift truck", is certainly automotive equipment comparable to the other equipment used by Carrier and so classified. We find therefore, that the Hyster BN 707 forklift comes within the purview of equipment specified in Rule 41, ARTICLE X of the S.P. & S. Agreement and also Rule 55 M.

There is a difference of opinion between the parties as to whether the repair of the Hysters was "customarily" performed by Maintainers in the Maintenance of Way Department. Carrier avers, as indicated by the quotation from its submission above, that machinists and outside contractors as well as Maintainers have done repair work on the vehicles in question. The record also indicates that Carrier challenged Petitioner as to specific evidence to the contrary. We note, first, that Carrier has submitted no evidence in support of its assertions. Second, it is clear that Carrier never asserted that individuals other

than Maintainers performed the work on former S.P. & S. property; as in the quote, the repeated assertions of Carrier related generally to its property as a whole. On the other hand, Petitioner submitted evidence, late in the handling on the property, indicating that at least eight Equipment Maintainers at the Vancouver Equipment Maintenance Shop ". . ..Since our employment in this shop, we have serviced and maintained all trucks, cars, hysters, track machinery....including this BN Hyster 707...." Contrary to Carrier, we do not view this statement as self-serving, since the signators are not involved in this Claim, but as competent evidence supporting the claim of customary work on the S.P. & S. property.

Based on all the facts, the reasoning above and the prior Awards of this Division involving the same parties and closely related issues, we find that the Carrier has violated the Agreement (See Awards 19624, 19898, 19909, 19924, 20042 and 20338). Carrier argues that the Board is without authority to award damages and that Claimants suffered no loss of earnings. This issue has been dealt with in depth in Award 19899 and also in Awards 19924 and 20338 as well as in numerous other Awards. We shall reiterate the principle enunciated in those Awards that since Claimants lost their rightful opportunity to perform the work they are entitled to a monetary claim. In this dispute Carrier has indicated that 46 man hours of work were involved, rather than 120 as claimed by Petitioner. We shall accept Carrier's unrefuted assertion and the Claim will be sustained on that basis.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 violated.

A W A R D

Claim sustained; Claimants will each be allowed 11½ hours of straight time pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 7th day of March 1975.