NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20231
Docket Number MW-20154

Joseph A. Sickles, 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 section forces instead of B&B forces to perform the work of installing a culvert at MP 17 plus 1250 feet on Subdivision 6 (System File MW-84/12/10/71).

(2) B&B Foreman John Saltarelli, Carpenter N. S. Emerson, Carpenter Helpers L. E. Titus and R. H. Butcher and Truck Driver A. O. Skar each be allowed eight (8) hours' pay at their respective straight-time rates because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: On November 4, 1971, Carrier assigned Section Forces to install a corrugated metal culvert. The Organization asserts that B&B forces should have performed the work. On the property, the Organization stated that the type of work in question had always been done by B&B forces on the former Northern Pacific and cited Rule 69 (c):

> "It is the intent of this Agreement to preserve pre-existing rights accruing to employes covered by the Agreement as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S Railroads prior to the date of the 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."

The Organization urges that the above quoted language, and certain other contractual provisions, provide that certain character of work accrues to certain classes of employees within the Maintenance of Way group.

On the property, and before this Board, Carrier has cited various rules which, it urges, justified distribution of the work to Sectionmen, and has stated that Rule 69(c) "... is merely a preservation of pre-existing rights as between Maintenance of Way employees and employees represented by other organizations on the merging railroads. It does not preserve practices as to the division of certain items or work between classes of employees within the Maintenance of Way."

A number of procedural issues are presented, concerning burden of proof, failure to cite specific rules on the property, reliance on evidence not considered on the property, etc. Because of our disposition of this Docket, it is not necessary to rule on those issues.

We must interpret Agreement rules as they are made. We may not read into rules, that which is not contained, or add to or detract a meaning which clearly was not intended by the parties. See Award 6365. A cold reading of Rule 69(c) would seem to support the Carrier's version of its import. But, we do concede that the language could be read to support the Organization's contention of its meaning.

A thorough review of the handling on the property and the entire record as a whole fails to convince us of the propriety of either party's contention. We note diverse conclusions, without information which would allow us to determine which conclusion is supported by the facts. The Organization has the burden of proof by a preponderance of the evidence. We do not find that the evidence of record here preponderates to the benefit of the Organization. Claimant has relied upon Second Division Award 6365. We do not feel that said Award resolves the question before us. Accordingly, under this record, we will dismiss the claim for failure of proof.

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 claim will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1974.