

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20338
Docket Number MW-20285

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { (Brotherhood of Maintenance of Way Employees
(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 Truck No. 1617 to Marshall Ford in Vancouver, Washington (System File 403 F/MW-84(c) 4-12-72B).

(2) Traveling Maintainers C. Anderson and H. Fisher each be allowed two (2) hours and thirty (30) minutes' pay at their straight-time rate because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: Claimants herein were Traveling Maintainers assigned in the Carrier's Roadway Equipment Repair Shops located at Vancouver, Washington, all formerly SP & S employees. On February 15, 1972 a truck assigned to B & B Crew 33 required an engine tune-up and was taken to an outside garage in Vancouver for the work. The Organization alleges that this action was in violation of the Agreement, particularly Rule 55 M and the Note to Rule 55.

The pertinent Rules are as follows:

"RULE 1. SCOPE

A. These rules govern the hours of service, rates of pay and working conditions of all employees not above the rank of track inspector, track supervisor and foreman, in the Maintenance of Way and Structures Department, including employees in the former GN and SP&S roadway equipment repair shops and welding employees.

B. The Maintenance of Way and Structures Department as used herein means the Track Sub-department, the Bridge and Building Sub-department, the Welding Sub-department, the Roadway Equipment Sub-department and the Roadway Machinery Equipment and automotive Repair Sub-department of the Maintenance of Way Department as constituted on date of consummation of this Agreement.

"C. This Agreement does not apply to employees in the Signal, Telegraph and Telephone Maintenance Departments, nor to clerks. The sole purpose of including employees and sub-departments listed herein is to preserve pre-existing rights accruing to employees 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 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.

NOTE to Rule 55: The following is agreed to with respect to the contracting of construction, maintenance or repair work, or dismantling work customarily performed by employees in the Maintenance of Way and Structures Department:

Employees included within the scope of this Agreement-in the Maintenance of Way and Structures Department, including employees in former GN and SP&S Roadway Equipment Repair Shops and welding employees-perform work in connection with the construction and maintenance or repairs of and in connection with the dismantling of tracks, structures or facilities located on the right of way and used in the operation of the Company in the performance of common carrier service, and work performed by employees of named Repair Shops.

By agreement between the Company and the General Chairman, work as described in the preceding paragraph which is customarily performed by employees described herein, may be let to contractors and be performed by contractors' forces. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company's forces. In the event the Company

"plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in 'emergency time requirements' cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. Said Company and Organization representative shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the Company may nevertheless proceed with said contracting, and the Organization may file and progress claims in connection therewith.

Nothing herein contained shall be construed as restricting the right of the Company to have work customarily performed by employees included within the scope of this Agreement performed by contract in emergencies that affect the movement of traffic when additional force or equipment is required to clear up such emergency condition in the shortest time possible."

"RULE 69. EFFECTIVE DATE AND CHANGES

A. This Agreement shall be effective May 1, 1971, and shall remain in full force and effect until changed or modified as provided herein, or under the provisions of the Railway Labor Act, as amended.

B. This Agreement supersedes all previous and existing agreements, understandings and interpretations which are in conflict with this Agreement covering employees of the former Great Northern Railway Company; the former Northern Pacific Railway Company, the former Chicago, Burlington & Quincy Railroad Company, the former Pacific Coast Railroad Company; the former King Street Station and the former Spokane, Portland & Seattle Railway Company of the craft or class now represented by the Organization party to this Agreement.

C. It is the intent of this Agreement to preserve pre-existing rights accruing to employees covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN and

"SP&S Railroads prior to the 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."

Carrier first raises the matter of a Third Party Notice with respect to the International Association of Machinists. The record indicates that the Machinists were notified by this Division and made an appropriate response; there is no impairment of the Board's jurisdiction in this matter.

On the merits, Carrier makes a series of arguments. First Carrier asserts that in the absence of restrictions in the Agreement, it has the unabridged right to determine the manner in which work is to be performed. Carrier asserts further that the work of repairing the truck in question is not reserved exclusively to Maintenance of Way employees. Carrier states that the Scope Rule is general in nature and that the Classification of Work Rule (55) does not grant exclusive work rights. Carrier concludes that since the Petitioner has not proved that the work in question is within the scope of the controlling agreement, the Note to Rule 55 and Rule 69 (C) are inapplicable and no notice of intent to contract was required.

The issues raised by Carrier have been dealt with by this Board before. We have held that Rules 1 (c) and 69 (c), by their clear and unambiguous language, preserve the rights accruing to employees under the Spokane, Portland and Seattle Railway Company Agreement which existed prior to the merger (See Award 20042). Further, we have held that Rule 55 classifies the work coming under the scope of the Agreement (Award 19924) and as a basic principal, such work belongs to those employees for whose benefit the contract was made and may not be assigned to others.

Petitioner argues persuasively that under Rules 40 and 41 of the SP&S Agreement the employees in the Classification involved customarily performed automotive repair work. Evidence was presented on the property that automotive repair work customarily performed by employees in the Roadway Equipment Repair Shop, Vancouver, Washington was performed by others only after specific concurrence of the Organization had been obtained by Carrier. Additionally, we observe that the Note to Rule 55 specifically alludes to work which is customarily performed by the employees rather than the frequently argued doctrine involving work exclusively performed.

Carrier has presented argument but no evidence to support its position. The Rules and the evidence produced by Petitioner establish the validity of the Claim and it must be sustained.

Carrier argues that this Board is without authority to award damages and that Claimants suffered no loss of earnings. We have dealt with this issue in depth in Award 19899 and in numerous other Awards. As we said in Award 19924, Claimants lost their rightful opportunity to perform the work and are entitled to a monetary claim.

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 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1974.