

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21534
Docket Number MW-21482

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 Agreement was violated when, on October 15, 1974, a machine operator and a sectionman were permitted to replace the belts on a roadway machine identified as Broom X60007 and, as a consequence thereof

(2) Traveling Equipment Maintainer Charles Lassiter shall be allowed four (4) hours of pay at his straight-time rate.

OPINION OF BOARD: Petitioner alleges that a machine operator, assisted by a sectionman, replaced a series of belts on a roadway machine, identified as a Kershaw Broom, on October 15, 1974. Carrier does not dispute this fact except to deny that a sectionman was involved in the repair work. The work consisted of replacing worn belts on the machine's fan blade, alternator, water pump and hydraulic pump and took about four hours. Claimant, a Traveling Equipment Maintainer, was available to perform the work, but was not called or assigned to the work. Petitioner contends that this circumstance constituted a violation of Rule 55 M of the applicable Agreement, which provides:

"M. Traveling Maintainer and Maintainer Mechanic.

An employee 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 alleges that it has always been a practice for machine operators to perform routine maintenance work and make adjustments on their machines, to the extent that they were qualified to do so, when out in the field; such work has been performed routinely without claim or protest. Carrier also relies on an understanding reached with a predecessor Carrier dated December 4, 1959, which provided in Item 2:

"2. To further the purposes of this agreement, it is contemplated that machine operators and/or truck operators may, to the extent they are qualified to do so, make or assist in making repairs to their equipment, either in the repair shop or on line."

Carrier further asserts that the above section is not in conflict with the current Agreement, referring to Rule 69 B, and furthermore Rule 69 C clearly indicates that it is the intent of the Agreement to preserve the pre-existing rights accruing to employees as they existed prior to the merger. Those rules provide:

"RULE 69. EFFECTIVE DATE AND CHANGES

* * * * *

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; *****"

With respect to Carrier's allegation that it has always been a practice for machine operators to perform routine maintenance work, especially out in the field, it is noted that Petitioner's General Chairman denied this practice. The record is devoid of any evidence by Carrier in support of its assertion in this respect; at best, there is serious question as to whether the particular type of work performed could even be categorized as routine maintenance work or adjustments. Given the lack of proof, we cannot accept the general statement of practice by Carrier (see Award 19647 and many others).

Carrier's reliance on the December 4, 1959 Agreement is not well taken. A study of that 1959 Agreement indicates that among other things it consolidated three subdepartments into a single "Roadway Equipment Repair and Operation Department". The applicable Agreement herein reverted to five subdepartments within the Maintenance of Way Department. Thus, there is no indication that the terms of the 1959 Agreement were carried forward into the current (May 1, 1971) Agreement. Further, the provisions of Rule 69 B specifically void all prior agreements and understandings which are in conflict with the current Agreement; and in addition, it is noted that Rule 69 C preserves pre-existing rights only as they existed under similar rules previously. We can find no such comparable rules in this Agreement.

Rule 55 of the Agreement has been the subject of some controversy heretofore. We have interpreted this rule as a reservation of work rule in Awards 19924, 20338 and 20633. The work in this case was clearly that of a Traveling Maintainer, under Rule 55 M and there is patently a conflict between the Maintainer's work as defined in Rule 55 M and the provisions in the 1959 Agreement. Thus, Rule 69 B is applicable.

Carrier asserts that even if the claim had merit, this Board is without authority to award damages and Claimant has suffered no loss of earnings. Recognizing that a divergence of views exist, we have dealt with the identical issue involving the same parties on a number of past occasions (Awards 19924 and 20338 for example). As we have stated previously, Claimant herein lost his rightful opportunity to perform the work and therefore is entitled to be made whole for that loss.

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 19th day of May 1977.