

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21844
Docket Number MW-21601

Robert M. O'Brien, 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 use of other than Track Subdepartment forces to clean cars on the former NP cleaning track in the Carrier's Tacoma Yard is in violation of the current Agreement (5-1-71) and of historical and traditional practice under the Agreement which pre-existed at that location prior to 5-1-71 /System File S-P-114C/MW-84(c)-6, 3-5-75/.

(2) Sectionmen H. Gray, R. L. Rogers, J. Laster and G. A. Lyscio each be allowed eight (8) hours' pay at their respective straight-time rates for each day on which other than track subdepartment forces are used to clean cars on the former NP cleaning track at Tacoma Yards. This monetary claim is for the period beginning November 29, 1974 and continuing to the date on which track subdepartment forces are reassigned and used to perform the subject work.

OPINION OF BOARD: On November 4, 1974, the Carrier established a car cleaning operation at Tacoma, Washington utilizing clerical employees represented by the Brotherhood of Railway Clerks' Organization. On January 28, 1975, the Organization filed the instant claim contending that for over 30 years, track sub-department employees at Tacoma Yard have always cleaned cars. The Organization submits that Rule 1(C) and Rule 69(C) of the current Agreement between the parties was intended to preserve pre-existing rights that had accrued to employees on each of the component lines that were merged into Burlington Northern Inc. effective March 3, 1970. And one of these pre-existing rights was the right of track sub-department employees on the former Northern Pacific at Tacoma Yard to clean cars. Thus, when Carrier assigned this work to clerical employees, the Organization maintains that Rule 1(C), Rule 69(C) and a long standing practice of assigning this work to car cleaners was thereby violated.

Initially, the Carrier asserts that the instant claim was not properly filed within 60 days of the date of occurrence as required by Rule 42(A) and thus must be dismissed. However, this Board agrees with the Organization that the instant claim constitutes a continuing claim that may be filed at any time as allowed by Rule 42(D). Accordingly, we hold that the claim is properly before this Board for adjudication.

This Board finds that neither Rule 1(C) nor Rule 69(C) specifically grants to track sub-department employees the exclusive right to car cleaning work. Rather, the Rules preserve to those employees any pre-existing rights that had existed on the component lines prior to the merger. Yet we are unable to find from the record before us that track sub-department employees on the former Northern Pacific had the exclusive right to perform car cleaning work prior to the merger. The Schedule Agreement between the Organization and the former Northern Pacific did not grant track sub-department employees the exclusive right to car cleaning work. It was therefore incumbent on the Organization to prove that those employees had performed car cleaning work to the exclusion of all other employees system-wide on the former Northern Pacific. The Carrier has submitted documentary evidence that on the former Northern Pacific clerical employees as well as employees represented by the Firemen and Oilers Organization were assigned to perform car cleaning work. The Organization has failed to come forward with probative evidence to rebut Carrier's evidence. Accordingly, it is the considered opinion of this Board that the Organization has failed to establish that track sub-department employees on the former Northern Pacific had the exclusive, system-wide right to perform car cleaning work. And since they did not have this exclusive right prior to the merger, they did not have it subsequent thereto. The claim must therefore be denied.

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;

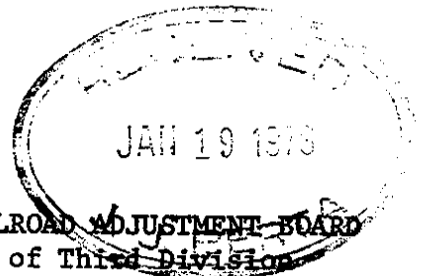
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.



ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.