

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32182
Docket No. MW-31901
97-3-94-3-233**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned Communication Department employees, instead of B&B Subdepartment employees, to perform building repair work (tile floors, paint walls, and ceilings, repair and replace doors and repair roofs) at the Marass communication sites located at Epping, Lostwood, Tagus, Gassman, Simcoe and Orrin beginning January 4 through February 12, 1993 (System File T-D-618-H/MWB 93-05-25B).**
- (2) As a consequence of the violation referred to in Part (1) above, District 15 B&B employees T. H. Solie, R. E. Johnson, L. M. Hoff, M. E. Novack, E. J. Alexander and J. P. Rufus shall each be allowed pay at their respective rates of pay for an equal proportionate share of the total number of man-hours (960) expended by the Communication Department employees performing the above-mentioned work.”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As Third Party in Interest, the International Brotherhood of Electrical Workers (IBEW) was advised of the pendency of this dispute and chose to file a Submission with the Board.

The Organization alleges that the Carrier violated the Agreement in assigning Scope protected work of the B&B Sub-department to the employees of another craft. It alleges that the work of tiling floors, painting walls and ceilings, repairing or replacing doors and repairing ceilings is protected by the express language of Rules 55 F and J and the classification of "Building Carpenters, Painters, Cement Finishers, Plasterers" all within the job Classification of Rule 55E. The Organization argues with supporting evidence that it has previously performed said work. It maintains that assignment thereof to Communications Department employees violates the Agreement.

The Carrier has denied the claim arguing that the work was performed at microwave facilities which are not on the Carrier's right of way. The Carrier argues that the Organization has never had an exclusive right to the disputed work which has historically been performed by the Communications Department. The Carrier states that evidence of past practice "has been previously provided to you."

A Third Party Submission was presented in this dispute by the IBEW in support of the Communications Department employees. The IBEW contends that the disputed work is at microwave sites, that have since the first system was installed been assigned to Communications employees. The IBEW presents 22 different signed statements supporting its position that the disputed work has historically belonged to its craft and class of employees and not the B&B.

A full reading of this claim establishes probative evidence of a practice permitting the assigned work. In this dispute we have a record of evidence that for well over 20

years Communication Department employees have performed this work at microwave buildings. We have a substantial record of probative evidence that these instant sites are not located on the Carrier's right of way. The Organization does not refute that point, even though the Note to Rule 55 refers to Scope work on the Carrier's right of way.

As to the full evaluation of evidence, the Organization has not carried its burden of establishing that this disputed work belongs solely to its members. Its supporting evidence establishes a shared, but not exclusive right. The abandoned claim establishes support for the Carrier's position. The doctrine of plain language cannot prevail when that language refers to Carrier's right of way. These six sites were not on the Carrier's right of way. The Organization's position is not bolstered with any significant support of practice or denial of history to the contrary, which permitted Communication employees to perform this work for decades. On the basis of the above, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of August 1997.