In the Matter of Arbitration Between BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES and BURLINGTON NORTHERN RAILROAD COMPANY	OPINION AND AWARD Before an Article I, Section 11 Arbitration Committee, Nicholas H. Zumas, Neutral.

BACKGROUND

The undersigned Neutral was selected as Chairman of an Arbitration Committee established pursuant to Article I, Section 11 of ICC Finance Docket No. 28250 (hereinafter "New York Dock" or "NYD"). Hearing was held November 14, 1988 in Washington, D.C. at which time exhibits were offered and received into evidence and oral argument was heard. The parties presented pre-hearing submissions. The Brotherhood of Maintenance of Way Employes (hereinafter "BMWE" or "Organization") was represented by Vice President S. W. Waldeier and the Burlington Northern Railroad Company (hereinafter "BN" or "Company") was represented by Director of Labor Relations Wendell A. Bell.

STATEMENT OF FACTS

This matter involves more than 50 claims by BMWE on behalf of its members and created a voluminous record which the BMWE asserts measures 17 inches when stacked one on the other. Where appropriate, therefore, this Arbitrator has avoided redundancy, referred to the record and consolidated

his treatment of various aspects of the case where such action is fair and efficient.

In the second half of 1983, BN began a process of consolidation of its sections. This process involved the abolishment of some sections and the attendant abolishment of section foreman positions. Since the trackage of BN was not reduced proportionally throughout the system, this process generally increased the geographic area that a foreman supervised. The process of consolidation continued through 1987.

Appendix F of the September 1, 1982 Schedule Agreement, derived from the October 7, 1959 National Mediation Agreement, provides:

> IT IS AGREED:
>
> Article I - PRIOR CONSULTATION
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> In the event a carrier decides to effect a material change in work methods involving employes covered by the rules of the collective agreement of the organization party hereto, said carrier will notify the General Chairman thereof as far in advance of the effectuation of such change as is practicable and in any event not less than fifteen (15) days prior to such effectuation. If the General Chairman or his representative is available prior to the date set for effectuation of the change; the representative of the carrier and the General Chairman or his representative shall meet for the purpose of discussing the manner in which and the extent to which employes represented by the organization may be affected by such change, the application of existing rules such as seniority rules, placement and displacement rules and other pertinent rules, with a view to avoiding grievances arising out of the terms of the existing collective agreement and minimizing adverse effects upon the employes involved.
>
> As soon as is convenient after the effective date of this Agreement, and upon the request at reasonable intervals thereafter, the carrier and the General Chairman or his representative will meet informally in a conference to discuss such suggestions

as the General Chairman may have to minimize seasonal fluctuations in employment.

This Article does not contain penalty provisions and it does not require that agreements must be reached as the right of the carrier to make changes in work methods or to continue existing practices subject to compliance with the collective agreement is not questioned.

ARTICLE II - RATES OF PAY

A. The rates of pay of employes subject to the rates of pay rules of the collective agreement between the parties hereto shall be listed in a master wage schedule prepared by the carrier. A copy of this wage schedule shall be furnished to the General Chairman for his verification. The wage schedule shall constitute a part of the rates of pay, rules and working conditions agreement between the parties, but may be physically bound with the general working conditions agreement reproduced as a document under separate cover. This rule does not require that multiple positions of the same classification and carrying the same rate of pay need be individually listed, but the listing shall be in whatever detail is necessary to enable the ascertainment from the schedule of the rate of pay for each position of employes referred to herein. When rates of pay are generally revised and when revisions are made in individual rates of pay, the General Chairman shall be furnished with a statement of the adjustments to be made in the rates as shown in the master wage schedule. When the rules and working conditions agreement is generally revised or reprinted the master wage schedule shall be revised to show the then current rates of pay and reproduced and distributed in the same manner as the Rules an Working Conditions Agreement.

B. The listing of rates of pay in the Agreement does not constitute a guarantee of the continuance of any position or any certain number of positions or anything else other than as stated in paragraph A hereof.

ARTICLE III - RATES OF PAY OF NEW POSITIONS AND ADJUSTMENT OF RATES OF SUPERVISORY EMPLOYES COVERED BY THE RULES OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES HERETO WHERE DUTIES AND RESPONSIBILITIES HAVE ALLEGEDLY BEEN EXPANDED

A. If a new position is established for which a rate of pay has not been agreed upon, the carrier will in the first instance establish a rate which is commensurate with the duties, responsibilities, characteristics and other requirements of said position. If the General Chairman does not agree that the rate of pay so established is commensurate with the duties, responsibilities, characteristics, and other requirements of the position, he shall so notify the carrier and thereupon the duly

authorized representative of the carrier shall meet with the General Chairman or his representative for the purpose of mutually agreeing upon a rate which will be satisfactory to both parties. In the event of failure to reach a mutual agreement on the subject, it will be submitted to arbitration in accordance with paragraph C of this Article.

B. If, as the result of change in work methods subsequent to the effective date of this Agreement, the contention is made by the General Chairman that there has been an expansion of duties and responsibilities of supervisory employes covered by the rules of the collective agreement between the parties hereto resulting in a request for wage adjustment and a mutual agreement is not reached disposing of the issue thus raised, the matter will be submitted to arbitration in accordance with paragraph C of this Article.

C. The submissions to arbitration provided for in paragraphs A and B of this Article shall be under and in accordance with the provisions of the Railway Labor Act; shall be between the individual carrier and the system committee of the organization representing employes of such carrier; and shall be governed by an arbitration agreement conforming to the requirements of the Railway Labor Act which shall contain the following provisions:

(1) shall state that the Board of Arbitration is to consist of three members;

(2) shall state specifically that the question to be submitted to the Board for decision shall be limited to the single question as to whether the rate established by the carrier should be continued or whether the rate suggested by the General Chairman should be adopted or whether an intermediate rate is justified; and that in its award the said Board shall confine itself strictly to decision as to the question so specifically submitted to it;

(3) shall fix a period of ten (10) days from the date of the appointment of the arbitrator necessary to complete the Board within which the said Board shall commence its hearings;

(4) shall fix a period of thirty (30) days from the beginning of the hearings within which the said Board shall make and file its award; provided, that the parties may agree at any time upon the extension of this period;

(5) shall provide that the award shall become effective on the date that it is rendered and the rate awarded

shall continue in force until changed or modified pursuant to the provisions of the Railway Labor Act.

In 1964, the following agreements and memoranda were produced in mediation between BMWE and Spokane, Portland and Seattle Railway Company ("SP&S"), one of the later component carriers of the BN.

ATTACHMENT A

MEMORANDUM OF AGREEMENT
between
Brotherhood of Maintenance of Way Employes
and
Spokane, Portland and Seattle Railway Company (System Lines)

Effective July 16, 1964, the rate of pay of the operator of the two machines described below will be $2.6428 per hour:

McWilliams Air Hydraulic Production Tamper, identified as R-23

Autojack Electromatic Tamper, identified as R-25

Dated at Portland, Oregon this 15th day of July 1964.

ATTACHMENT B

NMB Case No. A-7197

MEDIATION AGREEMENT
between
Brotherhood of Maintenance of Way Employes
and
Spokane, Portland and Seattle Railway Company (System Lines)

In settlement of the differences as set forth in an application for mediation as described in Docket Case No. A-7197 of the National Mediation Board and under the provisions of the Railway Labor Act, amended, it is mutually agreed that the questions so submitted shall be and are hereby disposed of as follows:

(1) Memorandum of Agreement, attached hereto but not made a part hereof, covering adjustment in rates of pay of Section Foremen whose sections are lengthened because of consolidation of sections;

(2) Memorandum of Agreement, attached hereto but not made a part hereof, covering rates of pay of operator of McWilliams Air-hydraulic Production Tamper identified as R-23 and Autojack Electromatic Tamper identified as R-25.

This agreement shall become effective July 16, 1964 and remain in effect until changed in accordance with the Railway Labor Act, amended. This in full, complete and final settlement of the Brotherhood's notices of June 13, 1960, August 10, 1960 and January 16, 1964.

Dated at Portland, Oregon this 15th day of July, 1964.

ATTACHMENT C

MEMORANDUM OF AGREEMENT
between
Brotherhood of Maintenance of Way Employes
and
Spokane, Portland and Seattle Railway Company (System Lines)

Effective July 16, 1964 the rates of pay of the foremen of the sections named below whose sections were lengthened due to consolidation of sections will be adjusted by adding fifty (50) cents per mile per month to the basic line section foreman's monthly rate of pay.

Section No.	Headquarters	Present Rate	New Rate
25	Bingen	$431.54	$435.54
26	Lyle	431.54	434.04
34	Paterson	431.54	434.04
35	Plymouth	431.54	434.54
36	Finley	431.54	434.04

If any sections are lengthened in future due to consolidation of sections, the monthly rate of foremen whose sections are lengthened will be adjusted on this same basis. Fractions less than one-half (1/2) mile will be dropped; fractions greater than 1/2 mile will be figured as one mile.

Dated at Portland, Oregon this 15th day of July, 1964.

The trackage acquired by BN which led to the section consolidations and abolishments in the early and mid-1980s was generally in good repair. As to the mechanics of the operation, Claimants continued to maintain the track (including switches, culverts, grade crossings, etc.) in proper condition and supervise those employes on their sections. There is no evidence in the record that the work of the section crews on the additional track was not performed generally in the fashion it was on the track owned before the consolidations.

POSITION OF THE BMWE

BMWE contends that Claimants are entitled to an increased rate of pay because the expansion of the section territories supervised constitutes a "material change in work methods" as described in Appendix F. BMWE cites the October 7, 1959 National Mediation Agreement in support of its position. BMWE recites meticulously the details of the expansion of territory for which each Claimant is responsible but in the interests of brevity they are not repeated here. BMWE maintains that the change in physical territory, the work in which was supervised by Claimants, did "add workload, duties and responsibilities to Claimants...." BMWE rejects BN's contention that increased mechanization of the maintenance crews has reduced the work of foremen and track inspectors, and BMWE argues by implication that the mechanization is evidence of the increased duties on the part of those employes. Similarly, BMWE contends that the expansion of section territory adds to the duties and responsibilities of section foremen. Finally, BMWE

maintains that it did not receive adequate notice, as provided in Appendix F, of a situation requiring a discussion of a change in rate of pay.

POSITION OF CARRIER

BN contends that Claimants are not entitled to an increase in their rate of pay because there has been no change in work methods that has resulted in increased duties and responsibilities of Claimants. BN maintains that Appendix F is not applicable and it also rejects BMWE's argument that a procedural violation has occurred as to notice because if Appendix F is not applicable, then no notice is required. Even if Appendix F is applicable, the notice requirement does not become a factor unless a pay adjustment is appropriate. Since BN contends here that the adjustment was not appropriate, then, by extension, neither is the notice.

Further, BN contends that if Appendix F is applicable, BMWE has failed to prove, pursuant to Appendix F, either the change in work method, the increase in duties or the causal relation between the two. BN contends that a mere expansion of the territory is not equated by Appendix F with a change in work methods. BN points out that the work in question is the same work that was performed prior to the consolidation and that the evidence proves that the work continued to be performed in the same manner after the consolidation.

Finally, BN maintains that expansion of territories has occurred in the past and the establishment, abolishment and consolidation of sections, along

with the change of their headquarters and territories, have been accomplished "without any negotiations with the [BMWE] or any objections thereto."

FINDINGS AND CONCLUSIONS

The question to be resolved is whether Claimants were properly denied a rate adjustment based on the changes in the territories supervised; and if so, what should the remedy be.

The record is clear that the territories supervised by Claimants have been extended and now include more geographic area and generally more track--and all its appurtenances--than they did in the period before these consolidations began. This extension is examined in detail by BMWE, but it is beyond question and readily admitted by BN. BN correctly contends that the mere expansion of the territory supervised does not lead to the conclusion that either the work method has changed or that the duties and responsibilities have increased. These are separate issues and must be proved to be causally related. And BMWE has the burden of showing both sets of facts and their causal relation.

BMWE has been able to show, in a cloudy fashion, some increase in the number of times that a given task might have to be performed by a given section in its territory based simply on the expansion of geographic area in the territories supervised by Claimants. This is logical as well. However, this is not sufficient to prove a change in the work methods employed. The

record is quite clear that Claimants are still performing the same type of work as they did prior to the section consolidations. The mechanics of performing their work has not changed. The consolidation of personnel and expansion of territories does not create a new technique for accomplishing a task. The mere supervision of consolidated personnel and territories does not demand that a different methodology be utilized for getting the job done. Rather, as BN correctly contends, it allows for a more efficient employment of resources.

BMWE's effort to construe the geographic expansion as a change in duties and responsibilities is likewise without merit. The expansion of the territories is not sufficient to prove an expansion of duties and responsibilities as intended in the Schedule Agreement. The Schedule Agreement plainly requires not simply an increase in duties but a change in the character or quality of the duties. There is insufficient evidence in the record to support BMWE's contention that this has occurred. There is repeated recitation in minute detail of the physical parts of the trackage that Claimants are responsible for maintaining. But there is insufficient proof that these are not the same parts and appurtenances of the trackage for which Claimants were responsible prior to the section consolidations. Moreover, Claimants are still doing the same type of work; and their work is of the same character and quality as before, although they may be doing their work more often or in more different places because of the extension of their territorial boundaries. Performing a task more often does not turn it into a different task.

As to the procedural issue raised by the BMWE regarding notice, there is no defect in the notice received. The notice is required only where all of the conditions are present that would require for a finding on the merits favorable to BMWE. In the absence of those conditions, no notice is required according to the Agreement.

AWARD

For the foregoing reasons, this Arbitrator finds that Claimants were properly denied a rate adjustment and that these claims must therefore be denied.

Nicholas H. Zumas
Chairman and Neutral

Date: March 13, 1989