

AWARD NO. 21

CASE NO. 5

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

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 replacing drive cable on drop table in the Diesel Shop at Auburn, Washington to employees holding no seniority under the Agreement February 14 and 15, 1977 (System File S-P-148C/MW-84(c3) 5/17/77B)
- (2) Bridge and Building Sub-department employees J.R. Mobley, K.C. Beazley, A.G. Robinson, each be allowed sixteen (16) hours' pay at their respective straight time rates of pay and four (4) hours' each at their respective time and one-half rates of pay."

OPINION OF BOARD:

In this case, the Organization maintains that Carrier violated Rules 1(c) and 69(c) of the Agreement by permitting Machinists represented by IAMAW to replace a drive cable on the drop table in the Diesel Repair Shop at Auburn, Washington. Auburn, Washington, is a point on the former Northern Pacific territory. BMWWE also relies upon Rule 55(I) and the Note to Rule 55 to support its claim. Since the dispute patently involved the third party interests of the IAMAW, that Organization was invited to present its position to this Board and did so by oral argument and written submission.

The Organization claims the work in question under alternative theories of contractual entitlement, i.e.: (1) that the express language of Rule 55(I) reserves the work, and (2) that B&B employees at Auburn customarily have performed work on turntables and the drop table. Carrier and IAMAW both presented evidence to establish that employees of the Machinists craft frequently performed work on the drop table, specifically including the work of changing the lifting cable.

Rule 55, upon which BMWE relies is a Classification of Work rule. Even if arguendo such Rule did expressly reserve certain work, the words of Rule 55(I), upon which BMWE relies, do not expressly reserve the work of changing a cable on a drop cable; i.e., "Steel Bridge and Building Mechanic: An employee assigned...in the general structural erection, replacement, maintaining or dismantling of steel in bridges, buildings and other structures ...". Both Rule 1(c) of the present Agreement and the Scope Rule of the former NP Agreement are "general" scope rules. See Awards 3-16640, 3-19224, 3-21884, and 3-22465. Rule 69(c) is retroactive looking and can preserve only those rights which pre-existed on the former property prior to merger. See Award 8 of P.L. Board 2206. The Note to Rule 55 likewise is no more broad in its coverage than the Scope Rule it exists to protect. Ibid.

Based upon the foregoing analysis, the BMWE must show exclusive system-wide practice of performing the disputed work on the former NP if it is to prevail herein. Not only is the evidence limited to one point, but the record persuasively establishes that IAMAW employees as well as BMWE employees have performed such work on the drop table at Auburn, Washington. We do not herein hold or imply that IAMAW is entitled exclusively to the work because ~~that~~ issue is not before us. We do hold that BMWE has not established

exclusive entitlement to said work, either by express language or by system-wide practice. Accordingly, the claim must be denied.

FINDINGS:

Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:


1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


F. H. Funk, Employee Member


L. K. Hall, Carrier Member

Date: Jan. 8/50