

PUBLIC LAW BOARD NO. 2206

AWARD NO. 35

CASE NO. 31

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 assigning Track Sub-department Truck Driver to perform B&B Sub-department Truck Driver work of hauling heating furnace from the airport to Spokane on March 17, 1978, and hauling the heating furnace and floor tile to Kalispell, Montana, Monday, March 20, 1978. (System File S-S-129C)
- (2) That B&B Truck Driver Brian L. Ashmore now be allowed twelve (12) hours pay for violation referred to in Part (1) of this claim.

OPINION OF BOARD:

The facts in this case are not in dispute. Claimant was assigned as Truck Driver in the B&B Subdepartment on a crew headquartered at Parkwater, Washington. Mr. Ron Wiklund is a Truck Driver assigned to the Track Sub-department on a Section Crew headquartered at Bonners Ferry, Idaho. Both employees are subject to the BN/BMWE Agreement and each fills a position described in Rule 55 P as follows:

RULE 55. CLASSIFICATION OF WORK

P. Truck Driver

An employee assigned to primary duties of operating dump trucks, stake trucks and school bus type busses, except trucks have a manufacturer gross vehicle weight of less than 16,000 lbs. or any vehicle of the

pick-up, panel delivery or special body type. The term special body refers to trucks such as those used by welder gangs and equipment maintainers with special bodies designed to transport mechanics, tools, equipment and supplies. When vehicles equipped with snowplow blades are used for plowing snow or moving dirt, the truck driver rate will apply in accordance with Rule 44. Truck Driver.

On March 17, 1978 Mr. Wiklund, the Track Subdepartment Truck Driver, hauled a load of material from Bonners Ferry, Idaho, west to Parkwater, Washington, in a large truck with a GW of 22,000 pounds. The work of driving and hauling into Parkwater from Bonners Ferry apparently is not contested in this case. However, on his return eastbound trip in the same truck, Mr. Wiklund hauled a heating furnace and some floor tiles from Parkwater, Washington, to Kalispell, Montana. The latter point is located some 242 miles east of Parkwater, Washington, and 137 miles east of Bonners Ferry, Idaho. The heating furnace subsequently was installed by local B&B crews at the Depot in Kalispell and the floor tile was laid by a local B&B crew in the lobby of the Depot at Libby, Montana.

Under date of March 25, 1978 the Local Chairman filed this claim for a twelve (12) hour roundtrip from Parkwater, Washington, to Kalispell, Montana, as follows:

I am submitting this claim on behalf of Mr. Brian L. Ashmoor, B & B Truck Driver, at Parkwater, Washington. On March 17th the B&B went out to the airport and picked up heating furnace to be delivered to Kalispell, Montana and floor tile. On Monday it was taken from Parkwater, Wash. to Kalispell, Montana by Mr. Ron Wiklund a track department truck driver, this has been B & B work and takes 12 hrs to make a round trip.

Mr. Brian L. Ashmoor is asking 12 hours pay for the track department doing his work. Thank you,

The claim was denied at all levels of handling and has come to us for disposition.

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This claim was handled on the property in tandem with Case No. 30 which we disposed of in our recent Award No. 34. The claims are significantly different, however, and require separate analysis. In the first place, we deal here not with supervisory performance of work, but rather with two employees, both classified as Truck Drivers under the same agreement, and each receiving the same rate of pay. Award No. 34 dismissed the claim in large part because the type of truck used was expressly excluded from the work reservation language of Rule 55 P. In the present case, we have no such literal preclusion, because the truck used by the Track Subdepartment driver to haul the construction materials was of the large type clearly listed within Rule 55 P. But that is not sufficient, standing alone, to confer upon the B&B Truck Driver a claim to the work superior to that of another Truck Driver whose work likewise is described in Rule 55 P. Both Claimant and Mr. Wiklund were covered by Rule 55 P, and if Claimant has an enforceable right of priority to haul the building supplies it must be demonstrated to exist outside of Rule 55 P.

There is no express language in Rule 1 or in the Salary Schedule which would support an inference that Claimant has a superior claim over the Track Subdepartment Truck Driver to the work at issue. The Organization appears to seek support in the Agreement for this view by recourse to the seniority rules. Rule 2 and 5 thus become the alleged contractual underpinnings for this claim.

The seniority rules clearly confer priority rights to employment and consideration for positions within subdepartments. Also, we note that separate seniority rosters are established for Track Subdepartment (Roster 2) Truck Drivers and B&B Subdepartment (Roster 3) Truck Drivers. But this does not reach the level of clear and express reservation of the specific work at

issue which Claimant must show to prevail in this case. Viewed most favorably to the Organization, the Agreement is ambiguous on the question whether the B&B Subdepartment Truck Driver has an enforceable contractual preference over a Track Subdepartment Truck Driver to haul construction materials. Given the contractual silence or ambiguity on this issue, the Organization was required to show reservation by custom, practice and tradition. There is an absolute paucity of evidence in that regard from the Organization and the Carrier has offered probative evidence to the contrary.

In the absence of express contractual reservation of the work to Claimant or a showing of reservation by custom, practice or tradition, we have no alternative but to dismiss this claim for failure of proof.

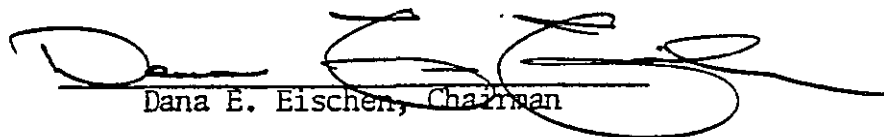
FINDINGS:

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 dismissed.


Dana E. Eischen, Chairman


F. H. Funk, Employee Member


L. K. Hall, Carrier Member

Date: October 15, 1980