PUBLIC LAW BOARD NO. 2206

AWARD NO. 65

CASE NO. 67

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILROAD

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the effective Agreement when failing to post a seniority roster for Steel Erection employes on that part of the Montana Division (Seniority District 20) that was the former Great Northern Railway. (System File B-M-111C)

2. (a) The Carrier be required to maintain separate Seniority Rosters for position bulletined by April 21, 1976, Bulletins #11, 12 and 13.

   (b) That Steel Erection Seniority Rosters be maintained in Seniority District No. 20 for positions assigned by bulletins dated May 18, 1976.

OPINION OF BOARD:

Under date of April 21, 1976, former Montana Division B&B Supervisor White, at Havre, Montana, advertised for bids, in accordance with Rule 21 of the BN/BMWE Agreement, several positions with applications through May 6, 1976. Among the actions noted in that announcement was the abolishment of temporary positions on Steel Erection Gang 534-014 and the opening of permanent positions as follows: Steel Erection Crew Foreman (Bulletin #11);

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Steel Erection Crew Mechanic (Bulletin #12); and Steel Erection Crew Helper (Bulletin #13). The newly created crew was to be headquartered in outfit cars on the Montana Division with assigned hours 8:00 AM to 5:00 PM, one hour lunch, Monday through Friday with Saturday, Sunday and holidays off. The bid was finalized on May 18, 1976 when W. R. Hinerman was assigned to the permanent position of Steel Erection Crew Foreman, Dale S. Atkinson was assigned to the permanent position of Steel Erection Crew Mechanic, and Mathew J. Piekarz was assigned to the permanent position of Steel Erection Crew Helper.

Following the establishment and assignment of the positions in the permanent Steel Erection Crew, then General Chairman F. H. Funk notified former B&B Supervisor White as follows:

November 29, 1976

"Mr. B. J. White
Supervisor B&B
Burlington Northern Inc.
235 Main Street
Havre, Montana 59501

Dear Mr. White:

We have on at least two occasions discussed Steel Erection positions in the B&B Sub-department in Seniority District #20.

A review of the effective agreement reveals under Rule 6 C(5) that Steel Bridge gangs would be continued on the former GN lines East and West. Seniority District #20 is made up entirely of former Great Northern property except the Rapelje Branch Line which was former NP. Rule 6 C(5) has never been eliminated from our agreement. Therefore, a separate roster should be maintained for positions bulletined in Bulletins 11, 12 and 13 dated April 21, 1976 and assigned in Bulletin dated May 18, 1976.

Rule 55 I clearly shows that on the former SP&S and NP, B&B carpenters will perform steel erection work under Rule 44. Therefore, the intent is clear to maintain separate rosters for steel erection crews on the former GN territory.

Under these circumstances, your April 21, 1976 bulletins 11, 12 and 13 were correct. Will you please advise if a separate roster will be maintained for those assigned to steel erection crew positions in Seniority District #20. We would like to develop these rosters to appear as Roster 6 in Rule 5 E, Bridge and Building Sub-Department.

Very truly yours,

F. H. Funk
General Chairman"

After a reminder notice from the General Chairman, the former B&B Supervisor responded under date of January 28, 1977, as follows:

"BURLINGTON NORTHERN
235 Main St.
Havre, Montana 59501

January 28, 1977

Mr. F. H. Funk, General Chairman
Brotherhood of Mtce. of Way Employes
500 Northwestern Federal Building
730 Hennepin Avenue
Minneapolis, Minnesota 55403

Dear Mr. Funk:

Regarding your letter of November 29, 1976, regarding the Steel Erection positions in the B&B Sub-department in Seniority District No. 20 be maintained on a separate roster.

Per conversation with Mr. J. B. Dagnon's office on January 7, 1977, he stated that they would prepare Roster 6 and he has assigned the following computer district numbers for the job classifications:

V-47	Rank A	Steel Erection Crew Foreman
V-48	Rank B	Assistant Steel Erection Crew Foremen
V-49	Rank C	Steel Erection Crew Mechanics
V-50	Rank D	Steel Erection Crew Helpers

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The Roster 6 would be prepared from the Seniority Roster Add Cards, form 12624, that we had previously sent in to him, which would cover positions bulletined in Bulletins No. 19, 20, and 21 dated July 10, 1975 and assigned in Bulletin dated August 1, 1975.

Sincerely yours,

B. J. White
Supvr. B&B

BJW:dj
File E-44
cc: T. O. Knutson
J. B. Dagnon"

Before the so-called "Roster 6" seniority roster establishing a separate listing for the Steel Erection Crew in District 20 was implemented, however, Carrier's then Vice President-Labor Relations T. C. DeButts intervened by letter to the new B&B Supervisor, dated June 1, 1977, as follows:

St. Paul, Minnesota
July 8, 1977

File MW-86(a)

Mr. M. E. Hagen:

This has reference to the June 1, 1977 Maintenance of Way Seniority Roster for the (20) Montana Seniority District B&B Subdepartment Roster 6, Ranks A, C and D Steel Erection Crew.

I do not find any provision for a Roster 6 in the Maintenance of Way Schedule Agreement. Rule 6C(5) provides rosters for district steel bridge gangs (1) former GN Lines East and (2) former GN Lines West.

The Montana Division crew could not be included on the former Lines East or West rosters as by agreement effective March 1, 1973 the former Lines West crew was converted to a Seattle Region steel erection crew with assigned territory of all subdivisions on the

Seattle Region included in Maintenance of Way Seniority Districts 21 and 22. By agreement effective April 1, 1973 the former Lines East crew was converted to a Twin Cities Region steel erection crew with assigned territory of all subdivisions on the Twin Cities Region included Maintenance of Way Seniority Districts 11, 12, 13, 14 and 15.

It has been proposed to establish a Billings Region steel erection crew, however, the Organization has not been receptive to so doing contending the territory is too large.

As per telephone conversation with Mr. White's office this date, please arrange to cancel and do not make distribution of the June 1, 1977 Roster 6.

T. C. DeButts

cc: Mr. D. F. Ylkanen

EJK/df4

When he learned that the Carrier was not going to carry through on a separate seniority roster for the Steel Erection Crew in District 20 the General Chairman filed the present claim on November 21, 1977, reading as follows:

November 21, 1977

"Mr. M. E. Hagen
Superintendent
Burlington Northern Inc.
235 Main Street
Havre, Montana 59501

Dear Mr. Hagen:

The Burlington Northern Inc., hereinafter referred to as Company, violated the effective agreement and continues to violate the effective agreement when failing to post a seniority roster for Steel Erection employes on that part of the Montana Division that was the former Great Northern Railway.

By referral, Rules 1A, 1B, 1C, 6C(5), 44, 55I and 69C are made a part of this letter.

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A review of the effective agreement reveals that under Rule 6C(5) that Steel Bridge Gangs would be continued on the former Great Northern lines East and West. Seniority District #20 is made up entirely of former Great Northern property except the Rapelje branch line, which was former NP. Rule 6C(5) has never been eliminated from our agreement. Therefore, a separate roster should be maintained for positions bulletined in Bulletins #11, 12 and 13 dated April 21, 1976 and assigned in bulletin dated May 18, 1976.

Rule 55I clearly shows that on the former SP&S and NP, B&B Carpenters will perform Steel Erection work under Rule 44. Therefore, the intent is clear to maintain separate rosters for Steel Erection crews on the former Great Northern territory.

Under these circumstances, the April 21, 1976 bulletins #11, 12 and 13 were correct and separate rosters were to be maintained for those assigned to steel erection crew positions in Seniority District #20.

In January of 1977, we had reached an understanding with B&B Supervisor B. J. White that a Steel Erection roster would be compiled in accordance with the effective agreement as per Mr. White's letter of January 28, 1977. We now find that these rosters have not been compiled and we must therefore request that the rosters be compiled as per the effective agreement.

Please advise if claim will be allowed as presented.

We desire and request a conference at an early date. Vice General Chairman T. O. Knutson will meet with you on my behalf.

Very truly yours,

FHF:bp opeiul2
cc T. O. Knutson
Matt Pepos

F. H. Funk
General Chairman"

The Organization relies primarily upon Rule 6-C(5) of the May 1, 1971 Agreement, reading as follows:

"Rule 6. BASIC SENIORITY DISTRICTS.

* * *

C. Separate seniority rosters shall be continued for the following classes of employees:

* * *

(5) District Steel Bridge Gangs: (1) Former GN Lines East and (2) former GN Lines West.

NOTE: Unless and until otherwise agreed, employes on these rosters will be confined to the territory in which they worked on former respective railroads, and may perform work in such territory without regard to employes with seniority in the districts listed in Rule 6A.

Also cited are Rule 1 (Scope) and Rule 44 (Composite Service); as well as Rules 55-I and 69-C, which read as follows:

"Rule 55. CLASSIFICATION OF WORK.

* * *

I. Steel Bridge and Building Mechanic.

An employe assigned to the setting of columns, beams, girders, trusses, or in the general structural erection, replacement, maintaining or dismantling of steel in bridges, buildings and other structures and in the performance of related bridge and building iron work, such as riveting and rivet heating, shall be classified as a steel bridge and building mechanic.

NOTE: On former SP&S and NP, B&B carpenters performed this type of work and will be under Rule 44."

"Rule 69. EFFECTIVE DATE AND CHANGES.

* * *

C. It is the intent of this Agreement to preserve pre-existing rights accruing to employes covered by the Agreements as they existed under similar rules in effect on the CB&Q, NP, GN and SP&S Railroads prior to the date of merger; and shall not operate to extend jurisdiction or Scope Rule coverage to agreements between another organization and one or more of the merging Companies which were in effect prior to the date of merger."

Carrier denied the claim at all levels of handling, culminating with a denial of May 4, 1978, as follows:

> Dear Mr. Funk:
>
> Referring to your letter dated March 14, 1978, file B-M-11C, appealing declination by Superintendent M. E. Hagen of your request to post a seniority roster for steel erection employees on that part of the Montana Division that was the former Great Northern Railway.
>
> My investigation of the facts in this case reveals that you, and not Mr. Hagen, failed to quote a rule which would be applicable in support of your contention. In your letter you made reference to Rule 6c(5) and allege that rule has never been eliminated from the agreement. If you will refer to letter agreement dated January 22, 1973, which was agreed to and signed by former General Chairman Lawrence Wold, you will find the former Great Northern Lines West bridge crew was converted to a Seattle Region steel erection crew. Letter agreement dated April 2, 1973 converted the former Great Northern Lines East bridge crew to a Twin Cities Region steel erection crew.
>
> Further in this regard, the possibility of establishing a Billings Region steel erection crew has been discussed with you. You have not been receptive to establishing such a crew contending the territory would be too large.
>
> In view of the foregoing, your appeal is respectfully declined.
>
> If you will include this case in your next docket of cases for conference, we will be glad to discuss it with you at that time.
>
> Sincerely,
>
> L. K. Hall
> Asst. to Vice President

Thereafter the matter was appealed to this Board for disposition.

The precise issue presented in this case is whether Carrier violated Rule 6-C(5) of the May 1, 1971 Agreement by failing to establish and maintain a separate seniority roster for employes working on the Steel Erection Crew located on the Montana Division (BMWE Seniority District 20). The territory comprising District 20 was, except for the Rapelja Branch line, a part of the former Great Northern (GN) Railroad. Prior to the merger of the various northern lines into BN, the GN did maintain separate rosters for district steel erection crews. It is evident that this arrangement was to be continued on the merged Carrier under the new "consolidated" BN/BMWE Agreement of May 1, 1971, by express language in Rule 6-C(5), as follows:

> Rule 6. BASIC SENIORITY DISTRICTS.
>
> C. Separate seniority rosters shall be continued for the following classes of employees:
>
> * * *
>
> (5) District Steel Bridge Gangs: (1) Former GN Lines East and (2) former GN Lines West.
>
> NOTE: Unless and until otherwise agreed, employes on these rosters will be confined to the territory in which they worked on former respective railroads, and may perform work in such territory without regard to employes with seniority in the districts listed in Rule 6A.

A critical piece of information not directly shown on this record is whether, on the effective date of May 1, 1971, there was in existence a steel bridge gang with a separate seniority roster on the Montana Division (Seniority District 20). We do know that a permanent steel erection crew was not bulletined and assigned until April-May 1976 and the General Chairman requested a separate seniority roster for that new crew in November 1976. From this we infer that there was neither a Steel Bridge Gang nor a separate seniority roster therefore in District 20 from the date Rule 6-C(5) became effective May 1, 1971 until 1976, when the steel erection crew in dispute herein was established.

In the meantime, in 1973 the BN and the BMWE had entered into two separate but essentially identical Letter Agreements which buried the terms of Rule 6-C(5) with respect to certain steel erection crew senority rosters. Those Letter Agreements, respectively dated January 22 and April 2, 1973, converted the former GN Lines West steel bridge gangs from Maintenance of Way Seniority Districts 21 (Spokane Division) and 22 (Pacific Division) into a "Seattle Region" steel erection crew, with a separate consolidated seniority roster; and converted the former GN Lines East steel bridge gangs from Maintenance of Way Seniority Districts 11 (Twin Cities Division), 12 (Lake Division), 13 (Dakota Division), 14 (Fargo Division), and 15 (Minot Division) into a "Twin Cities Regional" steel erection crew, with a separate consolidated seniority roster. With the execution of the Letter Agreements in 1973, Rule 6-C(5) was effectively amended to provide separate regional seniority rosters for steel erection crews on the former GN Lines East and West, rather than separate district seniority rosters in Districts 11, 12, 13, 14, 15, 21 and 22. No mention was made in those Letter Agreements of District 20, apparently because there was in 1973 no Division Steel Bridge Gang on the Montana Division and none was established until 1976.

The fundamental question is whether the intent of the parties to the May 1, 1971 Agreement was for Steel Erection Crews on the former GN territory to be provided a seniority roster separate from other B&B employes in the Maintenance of Way seniority districts. Our reading of Rules 6-C(5) and 55-I, including the Note to the latter, persuades us that such indeed was the intent of the parties. From 1971 until 1973 such separateness was maintained on the seven (7) districts in former GN territory which had Steel Erection Crews by separate district seniority rosters. From 1973 forward this separateness was maintained by two (2) regional Steel Erection Crew seniority rosters in which

the former district seniority rosters were consolidated. The effect of the 1973 Letter Agreements thus was to eliminate all then existing district Steel Crew seniority rosters created under Rule 6-C(5). However, the language of Rule 6-C(5) remained in effect in the controlling Agreement and was viable in 1976.

The fundamental thrust of Rule 6-C(5) to maintain separate rosters for Steel Erection Crews located on former GN territory remained undiminished, notwithstanding the 1973 conversion from district to regional rosters for those districts which had Steel Crews in existence in 1973. The only real quandary in terms of the intent of the parties is whether they would have placed a District 20 Crew, if one existed in 1973, under the Seattle or the Twin Cities Regional crews and rosters. At this time we can only speculate as to what they would have done then or might do now if they negotiated the matter in light of current events. We do know, however, that in the absence of some such special arrangement between the parties to deviate from the language of Rule 6-C(5) it remained part of their Schedule Agreement and fully effective in 1976 when the District 20 crew was established and this claim was filed. Given the plain language of Rule 6-C(5) in effect in 1976 we conclude that the claim must be sustained.

AWARD

Claim sustained. Carrier shall implement this Award within thirty (30) days of its execution.

Employe Member

Carrier Member

Dana E. Eischen, Chairman

Date: Nov 30, 1982