

PUBLIC LAW BOARD NO. 3460

Award No. 56
Case No. 56

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "1. The Carrier violated the effective agreement commencing March 13, 1981 and continuously thereafter when assigning clerical employees to perform janitorial service at Yakima, Washington Yard Office and other buildings at Yakima.
2. The claimant, section man V.E. Tyler be allowed 8 hours each regular assigned work day, 40 hours per week, at the section man's straight time rate of pay, until Track Sub-Department Roster 1 rank C employees are again assigned to perform these cleaning duties."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The Organization states that it is undisputed that Maintenance of Way employees have performed the janitorial service in dispute at Yakima for a long period of years, including prior to and after the merger of March 30, 1970. The property in question was former Northern Pacific property. The Organization alleges that it had been the practice under the May 1, 1971 agreement and for many years prior to that agreement, to have a section

man perform the janitorial work in question. Further, according to the Petitioner, the Brotherhood of Railway Clerks had not claimed the work nor had the Carrier removed the janitorial position from under the scope rules of this organization's agreement. For this reason the Organization insists that the removal of the claimant from the janitorial position was a unilateral action carried out without consultation with the general chairman or a representative of the Organization. The Organization cites rules 1C, the note to rule 55, and rule 69C as relevant to this dispute.

Contrary to Petitioner's position, Carrier does indeed disagree with respect to the past practice. According to Carrier, there is no question but that janitorial work of the type in question has been performed by various crafts and outside contractors over the years and not exclusively by employees of this Organization. In fact, Carrier raised the question of evidence of Petitioner's assertion with respect to exclusivity while the matter was being handled on the property. Further, Carrier notes that there is no rule support whatever for claimant's or the Organization's position. The Carrier relies, among other awards, on Third Division N.R.A.B. Award No. 19224 involving the same parties in which the Board held that to demonstrate exclusive rights to particular work, on the basis of past practice, the Organization

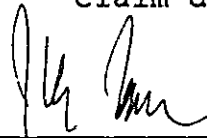
must prove existence or practice of exclusive assignment of such work to employees under the agreement on a system-wide basis. The Board went on to state:

" Since in this particular case janitor's work is done throughout the system by more than one craft and in view of the fact that the Board finds the contention upon which the Organization relies to be without merit, all parts of the claim are denied. "

The Board finds a serious flaw in Petitioner's position. Without regard to the arguments raised, the premises for those arguments are without question the fact that the work in question had been performed by a section man over many years. The record does not bear that contention out. There is no evidence whatever in the record to indicate that the section man at the location in Yakima had performed the janitorial work at any time. There is merely assertion and not evidence. This has long been held to be inadequate in disputes such as this. The Board must conclude that since there is no factual basis for the conclusions and arguments made by Petitioner, the claim must fail.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member



F.H. Funk, Employee Member

Dissenting