

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 3689

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

AWARD NO. 2

Case No. 2

STATEMENT OF CLAIM

1. The Agreement was violated when the Carrier used employees of the Burlington Northern Railway Company to pick up and remove scrap and debris from track in the Silver Bow, Montana Yards on February 25, 1982 (System File 7-26-13-14-54/013-210-9).

2. Because of the aforesaid violation, Section Foreman T. Archer and Sectionmen G. Jensen and J. Willoughby shall each be allowed eighteen and two-thirds (18-2/3) hours of pay at their respective rates.

FINDINGS

Until shortly before the occurrence covered in this claim, Silver Bow, Montana was an interchange point for the

Carrier and the Burlington Northern, with four tracks designated for the Burlington Northern's use in setting out and picking up cars. On February 25, 1982 the Burlington Northern sent a crew of its employees to the location. According to the Organization, these BN employees were "assigned or otherwise permitted . . . to clean up and remove scrap and debris" from the four tracks, as well as four other tracks. According to the Carrier, the BN employees were assigned by the BN, with the Carrier's permission, "to pick up . . . new and scrap brake shoes and parts" which were BN property and which had been left behind when the interchange arrangements were terminated in December 1982.

The Board has little difficulty with the basic concepts set forth by the parties. If the work involved was that of cleaning up scrap and debris on the Carrier's tracks, there is no rules agreement provision to have such work performed by other than employees of the Carrier. If in fact the BN employees simply arrived on the scene to recover, in belated fashion, property owned by the BN which the BN had


previously used on the site, then there is no valid claim that track "maintenance" work was performed or that it was improper for BN to use its own employees to recover its own materials.


It is the responsibility of the charging party to offer sufficient proof to its contentions, if a violation of rights is to be sustained. The written statement by one of the Claimants states that BN forces "picked up spikes, bolts and misc. car parts along with brake shoes". No mention is made in such statement of "debris" or of general track cleaning and maintenance work.

In this instance, the Board finds proof lacking that BN employees were -- or would have been -- assigned to other than the recovery of BN materials. There is no showing, therefore, of track maintenance work being performed by outside forces. Without questioning the Organization's statement of its accepted work jurisdiction, the claim must therefore be found without merit.

A W A R D

Claim denied.

  
HERBERT L. MARX, JR., Neutral Member

  
C.F. FOOSE, Employee Member

  
E.R. MYERS, Carrier Member