

PUBLIC LAW BOARD NO. 4104

Case No. 29

PARTIES TO DISPUTE: Brotherhood of Maintenance
of Way Employees
vs.
Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the agreement when placing the BNX 17-0022 into service without bulletining and establishing the proper Group 3 rate of pay for the position. (8 Gr MWA 83-9-26).

2. That Claimant, Bill Buresh with Roadway Equipment Sub-department Group 3 seniority, be allowed 544 hours Group 3 Machine Operator's rate of pay and position be bulletined."

OPINION OF BOARD: On April 18, 1983, B&B Gang #5 was provided a Bridge Timber Handler Crane in the handling of bridge timbers and other bridge material while working on bridges. By this action, the Organization alleged that Carrier violated Rule 20A of the Agreement.

First, the Organization maintains that the Bridge Timber Handler Crane should be classified as a Group 3 Machine and as such be bulletined. The applicable provision of the Agreement (Rule 20A) states:

"A. All vacancies and new positions of more than thirty (30) calendar days duration shall be bulletined in the seniority district for the sub-departments involved."

The Organization argues that the Machinery was operated for a 40 day period April 18, 1983 through May 27, 1983 and a 53 day period June 8, 1983 through July 31, 1983. Since the period in question exceeded the thirty day duration referred to in Rule 20A, the Organization maintains that Rule 20A was violated by Carrier.

Moreover, it maintains that the Carrier previously referred

to this machine as a tie crane. Since a tie crane is bulletined as a Group 3 Machine in the Roadway Equipment Sub-department, such should be applicable to the Bridge Timber Handler. It asserts that Carrier failed to establish the Roadway Equipment Sub-department Machine but instead assigned a B&B Carpenter to operate the Bridge Timber Handler. In the Organization's view, Carrier violated the Agreement by this action and asks that the claim be sustained.

Carrier maintains that the piece of equipment in question is not listed as a Group 3 Machine under Rule 5G nor does it require bulletining under Rule 20. It asserts that Rule 5G specifically lists those Machines classified as Group 3; with the Bridge Timber Handler clearly excluded. Therefore, it contends such machinery cannot be unilaterally added to a listing which was previously negotiated between the parties.

Carrier further adds that Rule 20A refers to bulletining positions of more than thirty (30) calendar days' duration. Since the Bridge Timber Handler was not used on a daily basis by the B&B Department, Carrier maintains that such sporadic and occasional use does not warrant the bulletining of a new position.

Finally, Carrier contends that if Claimant had been assigned as a Group 3 Machine Operator, he would have only performed 1-2 hours of service on those days that the equipment was used. As to the monetary claim requested, Carrier argues that Claimant was fully employed at the time and did not suffer a substantial monetary loss (difference in rate of pay is \$.39 per hour). Accordingly, and for the foregoing reasons, it asks that the claim

be denied.

A review of the record evidence reveals that the claim must be sustained in part. During the period in that the Bridge Timber Handler was used by Gang #5, it is undisputed that the work performed on the Machine was intermittent and not on a full time basis. The sporadic use of the machinery does not mandate that Carrier establish a new position to operate the machine or the bulletining of such. However, the fact that the machine was operated by Claimant requires that he must be compensated, as per Rule 44, at the Group 3 Rate. Additionally, Carrier is advised that should the Bridge Timber Handler be used on a regular basis (5-6 hours daily), then it must be bulletined in accordance with Rule 20A. Furthermore, should the machine be given to employees of a Tie Gang, it must also be bulletined. Accordingly, and for the foregoing reasons, the claim is sustained to the extent indicated in the Opinion.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;


That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim sustained to the extent indicated in this Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

9/4/90