

PUBLIC LAW BOARD NO. 4104

Case No. 80

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 on November 3, 4
and 6, 1986 it assigned Diesel Pit Laborers to operate a Group 3/4
tractor loader to perform roadway maintenance work in the Alliance
Yard.

2. As a consequence of the above stated violation Group 3/4
Machine Operator D. Timmens shall be allowed twenty-four (24) hours
pay at the Group 3/4 straight time rate and he shall be allowed
four (4) hours pay of the Group 3/4 time and one-half rate.

OPINION OF BOARD: On November 3, 4 and 6, 1986, Carrier assigned
Mechanical Department employees, Diesel Pit Laborers, to perform
roadway maintenance work. This work involved the operation of a
tractor loader to remove saturated sand and the addition of rock
fines in connection with the grading of roadways. Claimant was a
3/4 Machine Operator in the Roadway Equipment Subdepartment.

The Organization filed a claim alleging that Carrier violated
the Agreement. Carrier timely denied the claim. Thereafter, the
claim was handled in the usual manner on the property. It is now
before this Board for adjudication.

The Organization argues that the work in question is within
the Scope of the Agreement and refers to Rule 55(N) and (Q) which
state:

Rule 55. CLASSIFICATION OF WORK

N. Machine Operator

An employee qualified and assigned to the operation

of Machines classified as groups 1, 2, 3 and 4 in Rule 5.

* * *

Q. Sectionmen

Employees assigned to constructing, repairing and maintaining roadway and track and other work incident thereto.

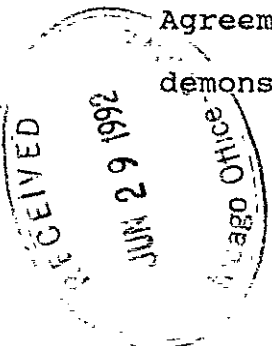
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Note to Rule 55: The following is agreed to with respect to the contracting of construction, maintenance or repair work, or dismantling work customarily performed by employees in the Maintenance of Way and Structures Department:

Employees included within the scope of this Agreement -- in the Maintenance of Way and Structures Department, including employees in former GN and SP&S Roadway Equipment Repair Shops and welding employees -- perform work in connection with the construction and maintenance or repairs of and in connection with the dismantling of tracks, structures or facilities located on the right of way and used in the operation of the Company in the performance of common carrier service, and work performed by employees of named Repair Shops.

The Organization argues that the work involved in this dispute has customarily and historically been performed by Maintenance of Way employees. It asserts that it is the character or purpose of the work and not the operation of the machine that determines who is assigned that work. As such, the Organization avers that the removal of sand and regrading of roadways is reserved to Roadway Equipment Subdepartment Machine Operators. Accordingly, for the action taken by Carrier in violation of the Agreement, it asks that the claim be sustained in its entirety.

Carrier, on the other hand, denies that it violated the Agreement. It asserts that the Organization has failed to demonstrate exclusive reservation of the work in this dispute by



custom, practice or tradition, and, accordingly urges that the claim must fail. Carrier points out that the work here did not include the maintenance of roads but was the work of cleaning the diesel facilities. It insists that such work is usually and traditionally performed by Mechanical Department employees with their equipment.

A reading of the Scope Agreement reserves all work of constructing, maintaining, renewing and removing tracks to MW employees. The basic question to be answered is whether the work involved in this dispute belongs to such employees. This Board finds that based on a review of the record evidence, such work should have been assigned to MW forces.

We agree with previous Board findings that it is the character or purpose of the work which is determinative of the class of employees who are entitled to the assignment, regardless of the equipment utilized by them to accomplish the task. Since roadway maintenance work is covered by the MW Scope Rule, it follows that the operation of the tractor in connection with such work also belongs to MW forces.

In light of the foregoing, we are persuaded that Carrier violated the Agreement when it assigned work to employees in the Mechanical Department that should have been properly assigned to employees in the Roadway Equipment Subdepartment. We will therefore sustain the claim.

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;

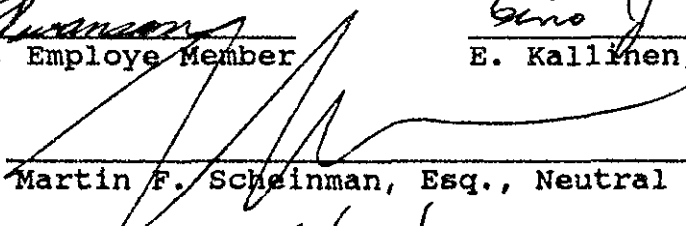
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD: Claim sustained.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Esq., Neutral Member

6/18/92