PUBLIC LAW BOARD NO. 2206

AWARD NO. 34

CASE NO. 30

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when permitting Assistant B&B Supervisor R. L. Michelbrook to perform Truck Driver work between Spokane and Wenatchee February 22, 1978. (System File S-S-128C)

(2) That B&B Truck Driver L. L. Fiechtner now be allowed ten (10) hours pay for violation referred to in Part (1) of this claim.

OPINION OF BOARD:

The facts surrounding the gravamen of this dispute are not contested. Claimant is a Truck Driver holding seniority in the Bridge and Building Subdepartment, headquartered at Spokane, Washington. Assistant B&B Supervisor R. M. Michelbrook has responsibility for supervising crews spread over a wide geographical area. Michelbrook's company vehicle is a leased pickup truck with GVW of approximately 8,000 pounds. On February 22, 1978 Michelbrook drove the truck from Spokane to Wenatchee, Washington, some 150 miles, to check on one of his crews. On the trip he hauled a quantity of floor tiles from Spokane to Wenatchee and delivered it to the local B&B crew for use in reflooring the Yard office. On his return trip, Michelbrook hauled back to Spokane for storage some scaffolding which the Wenatchee B&B crew had used on a painting project. Shortly thereafter, the Local

Chairman at Spokane filed the present claim seeking ten (10) hours pay for Claimant on the grounds that: "this work has been done in the past by Mr. Fiechtner. and feels that this is not supervisor work".

The claim was appealed through all levels on the property without resolution. In handling on the property and before this Board the question has been narrowed. The Organization asserts that the work in question is reserved to Agreement-covered Truck Drivers by Rules 1 and 55 P, and that arguendo practice to the contrary, therefore, is not relevant. Carrier maintains that there is no such express reservation in the cited Rules and that accordingly the Organization must show reservation by exclusive system-wide performance which it has failed to do on this record.

The question whether these Scope and Classification of Work rules are "general" or "specific" in their literal reservation of work to contract-covered employes is not a new or novel issue between these same parties under the same contract language. A number of awards, with which we do not disagree, have held that Rule 55 was intended by the parties as a "reservation of work rule". See Awards 3-19924; 3-20338; 3-20633; 3-21534.

In the present case, however, such labels as "general" or "specific" are not very helpful. If the Organization is to prevail in this claim that Claimant's contractual rights were violated by the transfer of building materials in a light pickup truck by a supervisor, it must show reservation of that specific work to Claimant, either by clear and unambiguous contract language or system-wide performance by B&B Truck Drivers to the exclusion of others as a matter of custom, practice or tradition.

At the first level of inquiry, we turn to Rule 55 P, upon which the Organization primarily relies:

RULE 55. CLASSIFICATION OF WORK.

* * *

P. Truck Driver.

An employee assigned to primary duties of operating dump trucks, stake trucks and school bus type busses, except trucks having a manufacturer gross vehicle weight of less than 16,000 lbs. or any vehicle of the pick-up, panel delivery or special body type. The term special body refers to trucks such as those used by welder gangs and equipment maintainers with special bodies designed to transport mechanics, tools, equipment and supplies. When vehicles equipped with snow-plow blades are used for plowing snow or moving dirt, the truck driver rate will apply in accordance with Rule 44. Truck drivers will perform such other work as may be assigned to him when not engaged in driving a truck.

We find that the provision under examination does not expressly reserve the specific work in question to B&B Truck Drivers like Claimant. The Rule does purport to reserve to BMWE represented employes certain types of truck driving work. This would be a much more viable claim if the supervisor had hauled those building materials in a "dump truck, stake truck or school bus type bus" with a GVW of 16,000 pounds or more. But the vehicle at issue in this case was a pickup truck and is as such expressly excepted from the coverage of Rule 55 P. Where the specific rule does not reserve the work at issue, then the Organization has the burden of proving such reservation by custom, practice and tradition. No such showing is made on the record before us, even though Carrier by assertions and documentary evidence put the Organization to its proof on this issue. Accordingly, we must dismiss the claim for failure of proof. See Awards 3-13347; 3-13937 and 3-19841.

FINDINGS:

Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:

1. that the Carrier and Employe involved in this dispute are; respectively, Carrier and Employe within the meaning of the Railway Labor Act;

2. that the Board has jurisdiction over the dispute involved herein; and

3. that the Agreement was not violated.

AWARD

Claim dismissed.

Dana E. Eischen, Chairman

F. H. Funk, Employe Member

L. K. Hall, Carrier Member

Date: October 15, 1980

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