

PUBLIC LAW BOARD NO. 2206

AWARD NO. 53

CASE NO. 53

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The Carrier failed to bulletin the position of Truck Driver for trucks 8109, 4565, 2606 and 8085 working in the B&B Sub-department, the trucks were working with B&B crew 30 in Portland, Oregon. (System File P-P-409C.)
- (2) The position of Truck Drivers for trucks 8109, 4565, 2606 and 8085 now be bulletined.
- (3) (a) C.A. White, Paul Bendel and Steve Harris be allowed the difference between Carpenter Helper and Truck Driver rates of pay.  
  
(b) Claimants White, Bendel and Harris be allowed actual expenses incurred for meals and lodging and mileage at fifteen cents (15¢) per mile beginning October 30, 1978, account of being required to work away from their homes in Portland, Oregon.

OPINION OF BOARD:

Claimants were assigned as carpenter helpers on Carrier's Bridge and Building (B&B) Sub-department Crew No. 30, headquartered at Portland, Oregon at the time of the alleged violation. On December 20, 1978 claim was filed by the Organization's Vice General Chairman as follows:

Mr. J. G. Edwards, Superintendent  
Burlington Northern, Inc.  
1101 N. W. Hoyt Street  
Portland, Oregon 97207

Dear Mr. Edwards:

Burlington Northern, Inc., hereinafter referred to as Company, violated the Effective Agreement on or about October 30, 1978 when it failed to bulletin the positions of three truck drivers with B & B Crew #30 at Portland, Oregon, as provided by Schedule Rules. These trucks each have a manufacturers gross vehicle weight in excess of 16000 lbs. and are being used on a regular basis.

Rules including but not limited to 1A, 1B, 5E, 20A, 20B, 21, 22, 55F, 55G, and 55P are by referral made part of this letter.

The Company has one regularly assigned truck driver assigned to work with B & B Crew #30. He is used primarily to drive boom truck #8109. The Company also has in use with this crew truck numbers 4565 (flat bed stake truck), 2606 (flat bed stake truck), and also had until December 11, 1978 when it entered the shop for repairs, boom truck 8085.

These are trucks that are subject to bulletin under rule 20 and 55 P. The Company has bypassed the bulletin rules and has used B & B Foreman and First Class Carpenters to operate these trucks to the exclusion of truck drivers or helpers who could have advanced to the position of truck driver.

Due to this violation we request that Claimants Carpenter Helpers C. A. White, Paul Bendel, and Steve Harris be allowed the difference between carpenter helpers rate of pay which they received and truck driver rate of pay which they could have received if these positions had been bulletined.

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We also request that they be allowed actual expenses incurred for meals and lodging and mileage at fifteen cents (15¢) per mile beginning October 30, 1978 account required to work away from their homes in Portland, Oregon and commute to traveling crews or crews stationed at points other than Portland.

This is a continuing claim until such time as these truck driver positions are bulletined in accordance with Schedule Rules.

Please advise if this claim will be allowed. We desire and request a conference.

Yours truly,



S. R. Walster  
Vice General Chairman

cc: C. H. Lindsey  
H. H. King

The claim was denied by letter of January 2, 1979 as follows:

January 2, 1979

Mr. S. R. Walster  
Vice General Chairman  
Brotherhood of Maintenance of  
Way Employes  
16502 N. E. 38th St.  
Vancouver, Washington 98662

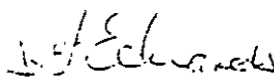
Dear Sir:

Reference is made to your letter dated December 20, 1978, pertaining to claims submitted for Messrs. C. A. White, Paul Bendel and Steve Harris account trucks used by B&B Crew 30 at Portland, Oregon, have not been bulletined.

Reference is made to BIME Schedule Rule Number 44 where allowance is made for pay when employees are assigned to positions in a higher or lower rated position. The trucks in question have not been used regularly as charged, rather they have been used sparingly as mechanical problems precluded their regular use. You do not identify dates so used, so I cannot reply directly to your claim in that regard. Further, I do not find where any of the claimants have on file a letter stating their interest on

desire to work other types of service; neither do I find any particular qualification for their being called for other service. The individual used as driver was a first class carpenter receiving a higher rate of pay than a truck driver, again falling under the scope of Rule 44. Further, I hesitate abolishing a carpenter position (who receives a rate of pay higher than a truck driver) to make room for a truck driver, as it serves both our interests as presently assigned.

This letter to advise that I decline your claim in its entirety; however, as requested, am willing to discuss the matter at your convenience.

  
J. G. Edwards  
Superintendent

SRL:1km

File: 108-1 (White, Bendel, Harris)

Subsequently the claim was processed up to and including the highest designated Carrier officer.

While the Organization has cited several rules in its claim, the primary focus is upon Rule 20 of the Agreement between the parties. Rule 20 reads as follows:

Rule 20. Positions to be Bulletined.

- A. All vacancies and new positions of more than thirty (30) calendar day's duration shall be bulletined to all employees in the seniority district for the sub-departments involved.

Rule 20, by implication, defines the threshold issue in the instant case; viz., were there vacancies or new positions of more than thirty (30) calendar days' duration which would thereby require a bulletin? The Organization's rhetoric and assertions notwithstanding, we find no probative evidence on the record to demonstrate the establishment or duration of such vacancies or positions which would bring Rule 20 into play. We find, therefore, that the

Company did not violate the Agreement as asserted in Part (1) of the instant claim. The Organization's failure to prevail on this threshold issue renders moot the remainder of the claim. Accordingly, the claim is denied in its entirety.

AWARD

Claim denied.

F. H. Funk  
Employee Member

Walter Horstmann, Jr.  
Carrier Member

Dana E. Eischen  
Dana E. Eischen, Chairman

Date: April 20, 1952