

PUBLIC LAW BOARD NO. 2206

AWARD NO. 54

CASE NO. 51

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 violated the Agreement January 25 and 26, 1979, when permitting other than B&B forces to construct a cabinet for Roundhouse office personnel to use at Livingston, Montana. (System File B-RM-161C)
- (2) Because of the violation referred to in part one (1) of this claim, B&B Carpenter John Ewan now be allowed sixteen (16) hours pay at his respective straight time rate of pay.

OPINION OF BOARD:

On January 25-26, 1979 employees from the Car Department were used by Carrier to construct a wooden storage cabinet for use in the office at the Roundhouse in Livingston, Montana. Thereafter, the present claim was filed on behalf of Claimant, a B&B Carpenter, alleging violation of his rights to perform that work under the BMW Agreement, particularly Rule 55-H and the Note thereto. Carrier denied the claim at all levels of handling on the property on grounds that the work did not belong "exclusively" to B&B Carpenters under rule or practice; that employees represented by the Brotherhood Railway Carmen (BRCofA) frequently have done such work in the past; and that, arguendo Claimant was "fully employed" and suffered no loss of earnings on claim dates.

Failing resolution on the property the matter was appealed to this Board for disposition. Third Party Notice was provided to the BRCofA, but that Organization waived opportunity to appear and be heard before the Board in this case.

For reasons developed fully in earlier awards of this Board, the claim is not supported by Rules 1 or 69(c). See PLB 2206-8. But the claim also is premised upon the express language of Rule 55, which many tribunals have held was intended by the parties as a "reservation of work rule". See Awards 3-19924; 3-20338; 3-20633; 3-20892; 3-21534; and PLB 2206-34. The specific language upon which the Organization relies in this case is Rule 55-H, as follows:

"RULE 55. CLASSIFICATION OF WORK.

* * *

H. Shop Carpenter.

An employee assigned to building or repairing of cabinets, desks or other furniture or engaged in the performance of bench carpenter work shall be classified as a shop carpenter.

* * *

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.

By agreement between the Company and the General Chairman, work as described in the preceding paragraph which is customarily performed by employees

Note to Rule 55 continued...

described herein, may be let to contractors and be performed by contractors' forces. However, such work may only be contracted provided that special skills not possessed by the Company's employees, special equipment not owned by the Company, or special material available only when applied or installed through supplier, are required; or when work is such that the Company is not adequately equipped to handle the work, or when emergency time requirements exist which present undertakings not contemplated by the Agreement and beyond the capacity of the Company's forces. In the event the Company plans to contract out work because of one of the criteria described herein, it shall notify the General Chairman of the Organization in writing as far in advance of the date of the contracting transaction as is practicable and in any event not less than fifteen (15) days prior thereto, except in "emergency time requirements" cases. If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the Company shall promptly meet with him for that purpose. Said Company and Organization representative shall make a good faith attempt to reach an understanding concerning said contracting, but if no understanding is reached the Company may nevertheless proceed with said contracting, and the Organization may file and progress claims in connection therewith."

We find the Organization is correct in asserting that Rule 55-H clearly and unambiguously reserves the work of "building or repairing of cabinets" to employees classified as Shop Carpenter under the BMW Agreement. Accordingly, any alleged "practice" of performance by Carmen or others cannot prevail over the plain language. The assignment of the work at issue to Car Department employees was a prima facie violation of Rule 55-H and Carrier has offered no proof that procedures and conditions set forth in the Note to Rule 55 justified an exception to the express reservation of work mandated by Rule 55-H. Accordingly, we shall sustain Part 1 of the claim. Part 2 likewise is sustained in keeping with other awards involving these parties wherein Carrier's "full

employment" argument was found not persuasive. See Awards 3-19924; 3-19898; 3-20042; 3-20412; 3-20633; 3-21340.

AWARD

Claim sustained.

F. H. Funk
Employee Member

Walter Heubach
Carrier Member

Dana E. Eischen
Dana E. Eischen, Chairman

Date:

April 30, 1952