

PUBLIC LAW BOARD NO. 2206

AWARD No. 55

CASE No. 52

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 July 10 and 24 and August 8 and 20, 1978, and thereafter when assigning Bridge Tender D. D. Williams to recharge the chemical toilet on Drawbridge #1 at Pasco, Washington, instead of Water Service Mechanic N. J. Carrier. (System File P-P-404C)
- (2) Water Service Mechanic N. J. Carrier be allowed 8 hours pay at Claimants straight time rate of pay for violation on July 10 and 24 and August 8 and 20, 1978, and for hours violation continued as listed in Employee's Exhibit "B".

OPINION OF BOARD:

This claim involves the work of "charging" (i.e., placing of fresh water in the holding tank) of a chemical toilet located in the Drawbridge Tenders' quarters on Bridge #1 spanning the Columbia River at Paso, Washington. In spring 1978 the Carrier replaced the old chemical toilet, which required recharging with about 25 gallons of water and caustic chemicals, with a new, more modern, toilet which required only 10 gallons of water. The task of recharging specifically involves drawing fouled water from the toilet into a holding tank, adding a packet of chemicals, and then adding 5 to 10 gallons of fresh water from a nearby faucet.

The new toilet was installed by the local B&B crew and Water Service employees covered by the BMWE Agreement. It is not disputed that with both the old and new toilets the Water Service employees periodically pump out and dispose of the waste from the holding tank below the toilet. The Organization asserted, and submitted corroboration to support, that Water Service employees recharged the old "non-recyclable" toilet on Bridge #1 periodically, at the time they emptied and cleaned it, by filling its 25 gallon tank with water and adding chemicals. The Organization maintains that the new toilet was installed on March 22, 1978 but Carrier says it was installed on May 22, 1978. In any event, after its installation the Water Service employees did the servicing, including recharging, until on or about June 28, 1978, when Bridge Tender Williams was ordered by B&B Supervisor Wold henceforth to recharge his own toilet. At Wold's direction, the Water Service employees who formerly had been doing the charging as part of the servicing of the toilet, instructed the Bridge Tender on the techniques of recharging the water tank. The Bridge Tender thereafter started recharging the toilet approximately every two weeks, and the claim thereafter was initiated by letter of September 1, 1978, reading in pertinent part as follows:

Burlington Northern, Inc., hereinafter referred to as Company, violated the Effective Agreement on July 10, 1978, July 24, August 8 and August 20, 1978 when it used other than water service employees to charge the chemical toilet located on drawbridge number 1 at Pasco, Washington.

Rules including but not limited to 1A, 1B, 5E, and 55 E, are by referral made part of this letter.

The charging of this type toilet is work which comes under the jurisdiction of water service employees. They have been used exclusively for this work until recently when B & B Supervisor O. R. Wold decided he would "discipline" Bridge tender D. D. Williams by requiring him to perform this service.

Due to this violation we request that Claimant water service mechanic N. J. Carrier be allowed eight (8) hours at his straight time rate of \$7.28 per hour for a total amount claimed of \$58.24. This to be in addition to any other compensation he may have earned.

This is a continuing claim until such time as the work of charging this chemical toilet is reverted back to the water service where it properly belongs.

The claim was handled to the top Carrier appeals officer on the property who denied it on grounds that the work was "not described in either Rule 1 or 55-E", that Water Service employees had not performed the work with "system-wide exclusivity", and that arguendo, Claimant was "fully employed" on claim dates. The claim subsequently was appealed to the Board and periodically supplemented thereafter with additional data concerning subsequent recharging of the new toilet by the Bridge Tender.

There is little room for doubt that the Organization has established the existence of a custom, practice or tradition of exclusive performance of the work of recharging the chemical toilet at Bridge #1 in Pasco, Washington. However, to prevail under a theory of reservation through practice the Organization is required by principles, not of our own making but imposed by the great weight of precedent in this industry, to show such exclusive performance on a system-wide basis. Not only does the record fail to show such exclusivity, but the Organization apparently does not refute Carrier's evidence that for some ten years chemical toilets in road crew Univans have been recharged by the B&B employees using them, rather than exclusively by Water Service employees. Accordingly, the claim cannot be sustained under Rule 1.

It appears that this claim must rise or fall upon the express language of Rule 55-E, as follows:

"RULE 55. CLASSIFICATION OF WORK.

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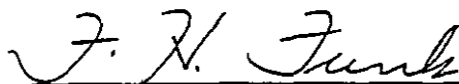
E. Water Service Mechanic-Pump Repairer.

An employe skilled in and assigned to repair pumps, pipe lines, or any other work in connection with the maintenance of water or fuel supplies or steam heating plants, including the bending, fitting, cutting or threading of pipe in connection with pipe work, coming under the jurisdiction of the Bridge and Building Department, shall be classified as a water service mechanic, pipefitter, steamfitter or plumber."

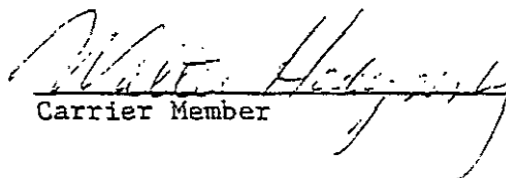
In our considered judgement, the foregoing language of Rule 55-E does not expressly reserve to employes covered thereby the work of pouring water and a packet of chemicals in to a toilet. The Organization relies upon the words: "...other work in connection with the maintenance of water". But that phrase is not specific in its description of work and therefore requires adversion to system-wide practice, which is not demonstrated on this record. Where the language of Rule 55 is clear and unambiguous we have not hesitated to enforce its work reservation impact. See PLB 2206-53. But ambiguous or open-ended language such as that at issue herein cannot be used to sustain this claim.

AWARD

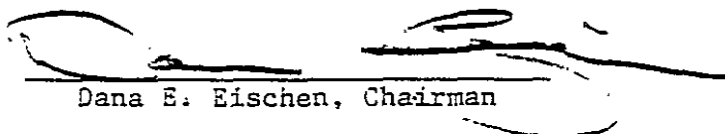
Claim denied.



Employee Member



Carrier Member



Dana E. Eischen, Chairman

Date: _____