PUBLIC LAW BOARD NO. 3460

Award No. 17
Case No. 17

PARTIES TO DISPUTE

Burlington Northern Railroad Company
and
Brotherhood of Maintenance of Way Employes

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

(1) Carrier violated the effective agreement April 24, 25, 28, 29, 30 and May 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15 and 16, 1980, when failing to assign Seattle Region Steel Erection Crew Members M. H. Johnson, T. Hoban, V. Pollow, D. Osborne, D. Hoadley, J. Bryant and R. Kuppinger to repair Steel Bridge 1402.6 over Sand Creek at Sandpoint, Idaho.

(2) Claimants, Regional Steel Erection Crew Members M. H. Johnson, T. Hoban, V. Pollow, D. Osborne, D. Hoadley, J. Bryant and R. Kuppinger, each now be allowed 144 hours straight time, 16 hours time and one-half and 10½ hours double time at their respective straight time, time and one-half and double time rates of pay."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimants herein were members of a steel gang which was the former Great Northern Line's East and West District Steel Gang. In order to provide greater work opportunities for this crew in January of 1973, the Organization and the Carrier agreed to expand the territory of the former Great Northern Steel Erection Crew to cover seniority districts 21 and 22 of the maintenance of way seniority groups. The work of the steel bridge and building mechanic is classified in Rule 55 of the agreement. The same rule also classifies the work of carpenters. There are separate seniority rosters for the Seattle Region's steel erection crew, the work in Districts 21 and 22. It is on this separate seniority roster that claimants

hold seniority. The former Great Northern agreement also has a classification of work rule which specifies the nature of the work which results in the classification of an employee as a steel bridge and building mechanic.

Bridge 1402.6, the subject of this dispute, was constructed in 1973 which was some three years after the merger of the various railroads into the Burlington Northern. It is a bridge then that may be classified as a "BN" bridge since it did not appear prior to the merger. Beginning on April 23, 1980 and continuing through May 16, 1980, Carrier used bridge and building crews (rather than members of the steel erection crew) to make emergency repairs on the bridge in question. The work included timbering supports as well as repairing cracks in the bridge (cracked steel beams). The Note to Rule 551 of the May 1, 1971, agreement (identical clearly to the former Great Northern Rule 40(c)) indicates that carpenters perform bridge repair work under Rule 44 on the former SP&S and NP railroads.

The Organization maintains that the classification of work rules allocates and reserves the work of replacing or dismantling steel and bridges to the claimants. Thus, the claimants, under the terms of the rules specified (Rules 40(c) and 551) the claimants were entitled to perform all steel repair work. Thus, the Organization insists that the assignment of this work to carpenters deprived the claimants work reserved to them under those rules. In support of its position, the Organization cites Award No. 65 of Public Law Board No. 2206 dealing with the maintenance of separate rosters for steel erection crews. The Organization argues that there is no question but that the claimants possess the necessary ability and skill to perform the repair work, that carpenter crews performed the work and it was, indeed, steel bridge work. Also, in support of its position, the Organization cites Third Division Awards 19924, 20338 and 20633 which hold that positions covered by an agreement belong to the employees for whose benefit the contract was made and may not be assigned to employees outside the agreement. Thus, based on the classification of work rule and the scope rule of the agreements, the Organization insists that the Carrier violated the agreement when it permitted other than Seattle Region steel erection crew employees to make the steel bridge repairs to Bridge 1402.6.

The Carrier insists that the Organization has failed to meet its burden of proof establishing that members of the Seattle steel erection crew had the exclusive

right to make the repairs on the particular bridge in question. Carrier argues that it has the clear right to determine in what manner to assign the work which it needs to perform unless such right is abridged or restricted by the agreement with the labor organization. In this instance, Carrier argues that there are no provisions in the Collective Bargaining Agreement which support the Organization's contention that the particular steel erection crew had the exclusive right to the work in dispute. Carrier points out that following the merger a provision was made in Rule 6C(5) of the May 1, 1971 agreement to retain the district steel bridge gangs. However, that rule did not give those gangs exclusive right to perform steel bridge work. Subsequently, when the territory was changed to give the gang work on a larger geographic basis -- the Seattle region -- there was still no exclusive right to perform steel erection work. It is clear that the B & B employees on the former SP&S and NP who did work on their railroads also could be used to perform steel bridge work.

After careful evaluation of the arguments presented, the Board has concluded that the Organization has not met its burden of proof to establish that the claimants had the exclusive right to make the repairs on Bridge 1402.6. Bridge 1402.6 could be repaired by either the Seattle Region (Districts 21 and 22) Steel Erection crew or a B & B Carpenter crew. Under the language of the agreement, B & B carpenters also have the right to repair bridges and there is nothing in the agreement to support petitioner's position. Petitioner's reliance on Award 65 of Public Law Board No. 2206 is misplaced. That award dealt with the question of whether it was the intent of the parties in the May 1, 1971, agreement to provide for separate seniority rosters for steel erection crews on the former Great Northern territory. The award concluded that the thrust of the new rule was, indeed, to maintain separate rosters for steel erection crews with the territory to remain undiminished. That award in no way indicated the exclusive right of those erection crews to perform all steel bridge repair work.

Similarly, petitioner's reliance on Third Division Awards 19924, 20338 and 20633 is misplaced. Those awards all held that work classified under Rule 55 of the agreement belonged to the employees for whose benefit the contract was made and may not be assigned to others. Those awards dealt clearly with the question of assigning maintenance of way work to employees not covered by this

schedule agreement. That is not the situation herein. The work in dispute in this matter was performed by employees covered by the maintenance of way agreement and not by non-covered employees.

There is nothing in the schedule agreement nor in the past practice which the parties can point to which permits exclusive right to bridge repair work to be vested in the steel erection gangs. Such work, by virtue of the language of the agreement, in this particular case can, indeed, be performed by B & B employees (carpenters) as well as steel erection crew members. Thus, there was no violation of the agreement by Carrier's assignment of the particular repair work to the B & B gang. The claim must be denied.

AWARD

Claim denied.

I. M. Lieberman, Neutral-Chairman

W. Hodynsky, Carrier Member

F. H. Funk, Employee Member

Dissenting

June 18, 1985