PUBLIC LAW BOARD NO. 3460

Award No. 30
Case No. 30

PARTIES TO DISPUTE

Brotherhood of Maintenance of Way Employes
and
Burlington Northern Railway Company

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the effective agreement August 28, 29 and September 2, 3, 4, 5, 8, 9, 10, 11 and 12, 1980, when shop craft employees installed a Nalco liquid water treatment system in the Vancouver, Washington, diesel shop. (System File P-P-507C)

2. Due to this violation, Claimants S. C. Glenzer, Fred Warner and E. L. McCallister each be allowed eighty-eight (88) hours' pay at their respective straight-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.

In view of the nature of the dispute herein, it was apparent that the Sheet Metal Workers International Association could, indeed, have had an interest in this matter. That organization was put on notice and elected to participate in this matter. The Sheet Metal Workers International Association (hereinafter referred to as the SMWIA) participated fully in the entire matter, including hearing submissions and rebuttal.

The facts in this matter are not in dispute. Claimants are regularly assigned water service employees at Vancouver, Washington, and each of them was a water service mechanic-pump repairer. Beginning in August of 1980, three sheet metal workers converted an existing unused steam pipeline in the diesel shop in Vancouver to carry Nalco fluid, a rust inhibitor, to the ramps for placement in diesel radiators. The project consumed approximately twelve hours for the three employees. The record

indicates further that the SMWIA employees had in the past performed all necessary pipe fitting in connection with the lines in question when they were steam lines. Also in the past Nalco fluid had been carried to the ramps in buckets by Mechanical Department employees. This was the first type of conversion of old steam lines for this purpose on the Carrier involved (former SP & S territory).

Rule 55E of the May 1, 1971, agreement for petitioner (almost identical to the former Rule 40 of the SP & S agreement) provides as follows:

> "E. Water Service Mechanic-Pump Repairer.
>
> An employee skilled in and assigned to repair pumps, pipelines, 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, Pipe Fitter, Steam Fitter, or Plumber."

The note to Rule 55 of the same agreement provides that if any of the work described in the preceding paragraphs is performed by outside contractors, Carrier will notify the General Chairman in advance of the transaction and meet with the General Chairman, if requested, to discuss the contracting transaction.

Rule 71 of the agreement between the Carrier and the mechanical employees (covering the sheet metal workers' activities) provides as follows:

> "Sheet Metal Workers' work shall consist of lining, coppersmithing and pipe fitting in shops, yards, buildings, and on passenger coaches and engines of all kinds.... The bending, fitting, cutting, threading, brazing, connecting and disconnecting of air, water, gas, oil, sand and steam pipes...."

Both of the above rules for the two crafts are classification of work rules. Neither of the scope agreements provides for any type of exclusive jurisdiction and are considered to be general rules.

The position of petitioner is essentially that the work in question belongs to the water service mechanics-pump repairers and their helpers. This work is defined and classified within the rules indicated (Rules 40 and 55E) according to petitioner

and the work is reserved to the water service mechanics. Specifically, the work of repairing, maintaining, adjusting, constructing, etc., of the Nalco water treatment liquid lines is work under Rules 40 and 55E and is reserved to the claimants, according to petitioner. In support of this position, the Organization argues that when Carrier elected to use existing water lines and installed additional lines and accouterments, it followed that the Carrier was obliged to assign the work to the claimants. Thus the assignment of work of this order to other forces deprived the claimants of the work reserved to them under the contract. The Organization argues further that unless there was an understanding reached between the Carrier and the General Chairman to permit the assignment of this work to other forces, he was obligated to assign the work to employees covered by the scheduled agreement with this Organization.

The sheet metal workers specifically allege that there has been no offer of proof by petitioner herein that they had ever before performed the pipe fitting work of converting existing steam lines to a piping system which would convey a water and Nalco fluid mixture. The reason for this is that such assignments had never before been performed on the former SP & S territory. For the reasons indicated and the fact that there has been no demonstration that this type of work had ever been performed by petitioner, either at the Vancouver facility or elsewhere on the SP & S territory, the sheet metal workers believe that the claim should be denied.

Carrier notes that the rules relied upon by petitioner, specifically Rule 55E, makes no mention of work associated with Nalco materials. That rule merely describes the skills of the employees and the particular classification. Furthermore, the rule does not bestow exclusive work rights, according to Carrier. In addition, that rule deals with contracting out of work and that is not the matter with which this dispute deals. Carrier argues that there are no rules in petitioner's agreement which grant exclusive right to perform any work to maintenance of way employees, much less the conversion of existing steam pipes. Furthermore, there were no pre-existing rights with respect to the former SP & S agreement since there was no work of this type in the past. Carrier alleges further that the classification rule (Rule 55E) relied upon by the Organization is almost identical with respect to pipe fitting work as the rule for the sheet metal workers (Rule 71). Carrier asserts that the type of work which is in question herein has never been given to

one group of employees as opposed to another. Because of the relative similarity of language in the two classification of work rules for each craft, work relating to pipe fitting or pipe lines on the property has never been vested with a particular craft, according to Carrier. In this instance, the work arose in a Mechanical Department facility and, hence, a Mechanical Department sheet metal worker or group of workers were assigned to do the work. Carrier has used as a criterion to determine who would do the work the skills of employees and their availability in the particular work site. In this instance, because of the availability of the sheet metal workers and the nature of the work involved, Carrier selected them for this particular task. Carrier alleges that there was no violation of the rules by its actions.

The Board must note initially that information on a factual basis was submitted for consideration in the handling of this dispute after the progression of the matter on the property. No such material may be considered by the Board as the parties well know.

Petitioner in this instance has the burden of proof to establish that the work in question belonged to employees covered by its agreement. Since this was the first instance in which this work had been performed, there was no pre-existing right to such work, nor was there any practice on the property with respect to the work. On its face, petitioner's Scope Rule does not vest to it any exclusive right to perform a particular type of work. While Rule 55 deals with contracting out certain work, this is not analogous to the situation herein. The work in question was simply not reserved by agreement to the petitioner. Neither was it reserved, it must be noted, to employees represented by the Sheet Metal Workers International Association. Neither group had established prior rights or exclusive rights to perform the type of work involved. There is no evidence in the record to support any such contention and the rules do not support the contention of petitioner in any event. As the Board views it, Carrier had the option of assigning the work in question to either group of employees as it saw fit. There was no violation of the agreement by its actions in assigning the particular work to employees covered by the sheet metal workers contract. The claim must be denied.

AWARD

Claim denied.

I. M. Lieberman, Neutral-Chairman

F. H. Funk, Employee Member
Dissenting

W. Hodynsky, Carrier Member

St. Paul, Minnesota
March 5, 1986