PUBLIC LAW BOARD NO. 3460

Award No. 47
Case No. 47

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes
and
Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"1. That Carrier violated the effective agreement January 23, 1981, when having Boilermakers' repair the steel tower on the transfer table at Livingston, Montana, instead of Bridge and Building (B&B)forces at that location.

2. That B&B employees, John Ewan, Bill Garcia and Tom Clark, shall be allowed four hours each at their respective straight-time rates of pay."

FINDINGS

Upon the whole reocrd, 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.

At the repair shop at the location in Montana, Carrier maintains, among other pieces of equipment, an electrically-operated motorized transfer table. At one end of the transfer table, a metal stanchion is mounted which is approximately twenty feet high. That stanchion is used to support the electrical wires and rollers to supply power for the transfer table. On January 23, 1981, the silent hoist ran into this steel tower and damaged it. The damage was such that it could not be used any longer to make contact with the electrical source. Carrier found it necessary to remove the stanchion or tower and rebuild it and replace it. Shop machinists were used to remove the stanchion. Shop boilermakers built a new one and shop machinists then installed a new stanchion on the transfer table. This dispute was as a result of these actions.

Petitioner in its arguments relies primarily on the scope rule as well as Rule 55(I) and the note to that rule to support its position. Petitioner's argument, in essence,

. that the steel tower falls within the category of "other structures" specified under Rule 55(I) and, therefore, the repair, which involved the remova rivets and riveting steel again, should have been performed by employees cover by the Organization's agreement. Thus, it is argued that the use of boilermakers to perform this work was in violation of the agreement since it should have been accomplished by members of the Steel Bridge and Building Mechanics group. In essence the Organization maintains that the work in question is the repair of the steel structure. Petitioner further suggests that it is clear that the steel tower is of solid rigid construction and cannot be confused with any other type of structure, such as the boom, which Carrier had argued. titioner also relies on Rule 69, dealing with pre-existing rights which accrue t employees who had been covered in this instance by similar rules in effect on the predecessor carrier, Northern Pacific. Thus, it is concluded that Carrier was obligated to assign the work of repairing the steel tower to the claimants herein and they were by virtue of Carrier's actions deprived of work reserved to them under prior agreements, as well as the terms of Rule 55(I). It is also suggested by the petitioner that Carrier failed to abide by the note to Rule 55 dealing with notification to the Organization of impending work to be transferred out of the unit or performed by non-agreement personnel.

Carrier argues that the work in question does not accrue to employees covered by this agreement. Carrier notes that the particular work of repairing a transfer table or stanchion in the diesel shop, as is the case herein, is not described in Rule 55. Such work, according to Carrier, cannot be considered work on a structure or steel bridge. Thus, it is incumbent upon petitioner, according to Carrier, to establish by the preponderance of evidence that the work in questio has been done throughout Carrier's facilities to the exclusion of all other loyees by employees covered by the agreement. No such evidence has been presented, according to Carrier. Carrier notes further that there was no evidence that twelve hours were actually used in the performing of the work in question and Carrier also denies petitioner's argument that boilermakers were the employees who had performed the particular activity. In substance, Carrier argues that the claim herein is not supported under any rules of the agreement.

The principles involved in this dispute have been dealt with in many prior awards, both throughout the industry and on this property, as well. The crux of the dispute

is the relevance of the particular work and relationship of that work to the language contained in both the scope rule and in Rule 55. There is no doubt that the scope rule in this agreement is general in nature and the classification of work rule is specific in the sense of the literal reservation of work to certain employees but, in this instance, the work in question is not specified in Rule 55. Thus, based on well-established principles, if the Organization is to prevail in this claim, it would be incumbent upon the Organization to establish that the particular type of work had been at least customarily performed by other employees covered by the agreement in other areas on Carrier's property. This has not been done. In fact, it could not have been done since the Carrier's evidence indicates that this is the first instance in the history of the Carrier in which the particular type of structure, the electrical stanchion, had been repaired or replaced. Furthermore, the Board must note that the claim, with respect to twelve hours of work, is unsupported by any evidence of record with respect to the activity of the other crafts.

The Board finds that Rule 55(I) does not expressly reserve the particular type of work in question to claimants. The terms ".... general structural erection, replacement, maintaining or dismantling of steel in bridges, buildings and other structures...." is not applicable to the particular structure herein with any degree of specificity. Clearly, for example, the function of riveting steel is not work which can be reserved exclusively to claimants in this instance since such work is obviously performed by boilermakers as well throughout the property. In substance, therefore, since the specific rule does not reserve the work in question herein, the Organization has made no showing on the record that the work has been reserved by custom, practice and tradition to members of the particular craft involved herein. Accordingly, the claim must be dismissed for failure to establish either specific agreement language in support of the claim or proof.

AWARD

Claim dismissed.

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I. M. Lieberman, Neutral-Chairman

Walter Hodynsky, Carrier Member

F. H. Funk, Employe Member

St. Paul, Minnesota
July 31, 1986