PUBLIC LAW BOARD NO. 3460

Award No. 75
Case No. 75

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

STATEMENT OF CLAIM:

"1. The Carrier violated the Agreement when it assigned outside forces to unload diesel fuel at the Fueling Facility at Great Falls, Montana, beginning June 6, 1983.

2. The Carrier also violated the Agreement when it did not give the General Chairman advance written notice of its intention to contract out said work, as stipulated in a Note to Rule 55.

3. The Carrier also violated the Agreement when it assigned other than B & B pumpers (Mechanical Department employees) to open and close pipeline valves and to process fuel meter tickets and fuel reports at Great Falls, beginning June 6, 1983.

4. As a consequence of the aforesaid violation, B & B Water Service Helper, J. L. Fisk, shall be allowed sixty-four (64) hours' pay at the fuel pumper rate 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.

The record indicates that, prior to June of 1983, fuel oil had been delivered to Great Falls via carrier tank cars and had been

pumped into the holding tanks from the tank cars by a B & B employee, generally a pumper. Beginning in June of 1983, Carrier contracted with a trucking line to deliver fuel to the Burlington Northern Diesel Facility in Great Falls. The trucking line used the pumps on their trucks to deliver the fuel and transfer it to the Carrier's holding tanks in Great Falls. It was this new method for delivery of diesel fuel which prompted the grievance and dispute herein. It was the argument of Petitioner, from the inception of the dispute, that pumping of fuel oil was covered under the scope of the Agreement and, furthermore, that B & B Sub-Department employees had pumped this fuel since the Fueling Facility had been installed at Great Falls. In addition, the Organization alleged that the Carrier violated the Note to Rule 55 regarding subcontracting.

In essence, the Organization argues that the unloading of fuel at the Great Falls Storage Facility has always been accomplished by a Fuel Pumper from Carrier's B & B Sub-Department, in accordance with Rule 2 of the Agreement. Either the employees from the outside contractor or the Mechanical Department were used to assist in the activity covered by the Maintenance of Way Agreement and, therefore, Carrier violated that Agreement, according to Petitioner. Furthermore, the Organization argues that the Note to Rule 55 was also violated since Carrier had failed to notify the General Chairman of the Organization in advance, in writing, with respect to the contracting out transactions.

Carrier maintains that there is no reservation either by express contract language, or by practice, of assigning the work in question to B & B employees, on a system-wide basis, to the exclusion of all others. In addition to there being no specific language in the Agreement relating to this type of work, there have been a number of points on the Carrier's system where fuel has been unloaded by various classes of employees, including carmen, machinists, clerks and foremen. Carrier points out that the nature of the work, involving the delivery of diesel fuel, has greatly changed with the advent of the fuel truck. Specifically, there is no need for any Maintenance of Way Employe (or pumper) to deliver or unload fuel. A fuel truck driver, in fact, disconnects his hose from the truck and connects it to the Carrier's storage tanks and the fuel is then pumped by the truck's pumps and flows freely into the Carrier's tanks. Thus, the prior practice, of using Carrier's pumps, is no longer used (since tank cars are no longer used). Carrier argues that it is merely taking delivery of its oil, purchased directly from the refinery and, therefore, the entire system has been changed. There is, in fact, no outside contractor involved. The Carrier does not contract for the unloading of fuel, merely the purchase of fuel and the delivery thereof. Thus, Carrier insists that the Note to Rule 55 does not apply and, similarly, there is no proof that work of the Claimant was given to another craft, as alleged by Petitioner.

The issue in this dispute has been litigated before the Third Division NRAB and, in Award No. 25878, that Board held as follows:

> "In this case, the nature of the work involved changed. Originally, the work involved unloading and pumping fuel from a fuel tank car into Carrier's storage tanks, involving hook-up work, disconnect work and numerous hours of pumping. The fuel is now delivered by truck, the driver connects and disconnects the hose, a meter measures intake and the entire process takes about forty minutes.
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> There is no evidence presented that an employee of any kind is required to unload the fuel. There is no proof, in the record, that unloading tank trucks is work exclusively in the jurisdiction of Claimant. There is no evidence presented that supports exclusivity on this work exists. In the absence of such proof, there is nothing to sustain the claim."

It is evident that there is no Rule support for Petitioner's position nor is there evidence to support a system-wide practice in support of the claim. Specifically, in addition, since the very issue involved in this matter has been heard and decided (involving the very same parties) before the Third Division, in the case cited supra, there is no basis for the claim being considered further. The principle of stare decisis is applicable. The claim must be denied.

AWARD

Claim denied.

I. M. Lieberman, Neutral-Chairman

W. Hodynsky, Carrier Member

F. H. Funk, Employee Member

9/20/88

St. Paul, Minnesota
August , 1988

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