

PUBLIC LAW BOARD NO. 4104

Case No. 81

PARTIES TO DISPUTE: Brotherhood of Maintenance of
Way Employees
vs.
Burlington Northern Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. The Agreement was violated when the Carrier assigned System B&B forces to supplant Division B&B forces in the performance of B&B work in the Denver Terminal Area beginning December 10, 1986 and continuing (System File #9 Gr./DMWA 87-4-2).

2. As a consequence of the afore-stated violation:

- (a) Furloughed First Class Mechanics W.C. Smith, R.S. Lorentz, D.T. Stone, R.E. Abbey and M.D. Williamson shall each be allowed 330.2 hours pay at their respective straight time rate and three and one-half (3.5) hours pay at their respective time and one-half rate. In addition, they shall each be allowed pay at their respective rates for an equal proportionate share of the man-hours expended by the System B&B force (excluding the Foreman) performing the afore-described work beginning February 13, 1987 and continuing.
- (b) Cut back District B&B Foreman K.L. Lytle shall be allowed the difference between what he would have earned as District B&B Foreman and what he was paid as a First Class B&B Mechanic for the 243.2 straight time hours and three and one-half (3.5) overtime hours worked by the System B&B Foreman performing the afore-described work beginning December 10, 1986 through February 12, 1987. In addition, Claimant Lytle shall be allowed the difference between what he would have earned as District B&B Foreman and what he was paid as a First Class B&B Mechanic for time worked by the System B&B Foreman performing the afore-described work beginning February 13, 1987 and continuing.

OPINION OF BOARD: The relevant facts of this case are not in dispute. In December 1980, Carrier found it necessary to perform

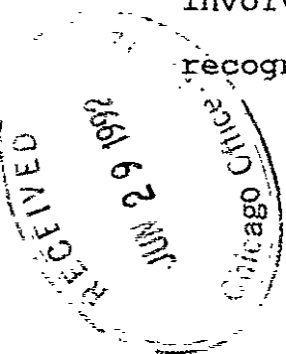
work involved in the maintenance and repair of bridge and building facilities. Accordingly, from December 10, 1986 through February 12, 1987, Carrier assigned Division Bridge and Building crews to perform the maintenance and repair work.

The Organization maintains that the work in question (on former CB&Q territory) should have been assigned to employees holding seniority as Division B&B employees who were either furloughed or assigned to lower rated positions on account of force reductions. In its view, Carrier's action here violates Rule 6(d) of the former CB&Q Agreement effective September 1, 1949. That provision reads, in relevant part:

(d) Employees assigned to System Bridge and Building gangs will have the right to work over the System and will not be subject to displacement by employees holding Division seniority. A System gang will not be used to supplant a Division gang but may be used to perform work on a seniority district when no Division gang with the required supervision, experience and personnel is available on the seniority district to perform the work to which such System gang is to be assigned.

The Organization points out that the language is clear that System B&B gangs and Division B&B gangs may perform similar work but that System B&B forces would not supplant Division forces in the performance of such work. In the Organization's view, Carrier's action has the effect of totally destroying the seniority rights of the affected Division B&B employees.

Moreover, the Organization argues that this dispute does not involve the necessity to show exclusive reservation of work. It recognizes that the work in question has been performed by System



B&B forces as well as Division B&B forces. The Organization asserts that System B&B forces may perform B&B work on a seniority district under certain circumstances, but with a restriction that System gang will not be used to supplant a Division gang.

For these reasons, then, the Organization asks that the claim be sustained. It seeks 330.2 hours at straight time rates for First Class Mechanics W.C. Smith, R.S. Lorentz, D.T. Stone, R.E. Abbey and M.D. Williamson. In addition, the Organization asks that B&B Foreman K.L. Lytle be allowed the difference between what he would have earned and what he was paid as a First Class Mechanic for the 243.2 straight time hours and three and one-half overtime hours worked by the System B&B Foreman.

Carrier, on the other hand, denies that it violated the Agreement here. It asserts that Rule 6(d) of the former CB&Q Agreement was not negotiated into the current agreement. In the Carrier's view, the restrictions contained in former Rule 6(d) would be in direct conflict with the new agreement which has no restrictive language on the type of work to be performed by System or Division B&B crews.

Carrier also insists that for the Organization to prevail here it must show that the work in question was performed exclusively by Division B&B employees. This, it contends, the Organization has not done. Accordingly, Carrier asks that the claim be denied.

After reviewing the record evidence, we are convinced that the claim must fail. Although the Organization may be correct in its assertion that Senior Division employees who had been furloughed

should be assigned to such work before junior employees, there exists no rule support for such contention. Although the intent of the parties may have been for such assumption, such language has not been incorporated into the existing agreement. It is therefore left to the parties to negotiate such language into the agreement. Accordingly, and for the foregoing reasons, the claim is denied.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;


That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim sustained to the extent indicated in this Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Esq., Neutral Member

4/18/92