

PUBLIC LAW BOARD NO. 5606

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY**

STATEMENT OF CLAIM:

1. The Agreement was violated when the Carrier assigned Mechanical Department Pipefitters N. Kenney and B. Raincourt to perform Maintenance of Way Department work (office construction of erecting new walls, installing sheet rock, taping, sanding, painting and varnishing floors) in the Electrical Shop at Waterville, Maine on January 15, 16, 17, 20, 21, 23, 24, 27, 28, 29 and 30, 1998.
2. As a consequence of the violation referred to in Part (1) above, Bridge and Building (B&B) Mechanic D. C. Huard shall receive thirty-four (34) hours' pay at his straight time rate for the work performed by the Mechanical Department employees. (Claim No. MW-98-17)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon. Since the Statement of Claim suggested that the Sheet Metal Workers International Association (the SMWIA) might have a third party in interest in the claim, the SMWIA was duly notified of the dispute and provided the opportunity to file a written response submission and to attend the Board hearings. The SMWIA filed a submission, and appeared for the Board's oral hearing.

This claim is based on the contention of the Brotherhood of Maintenance of Way Employees (the Organization or the BMWE) that the Carrier violated the terms of its collectively bargained Rules Agreement in directing two Sheet Metal Workers, covered by the Carrier/SMWIA Agreement, perform office remodeling and construction work in the Electric Shop at Waterville, Maine. The work at issue, as set forth in the claim, consisted of erecting new walls, installing sheet rock, taping, sanding, painting, and varnishing floors.

The Organization maintains that the work at issue has customarily and historically been performed by Bridge & Building Mechanics, and that in having such work performed by

Sheet Metal Workers that the Carrier violated the following rules of the Carrier/BMWE Agreement:

Article 1. Scope

1.1 The rules contained herein shall govern the hours of service, working conditions, and rates of pay of Engineering and Mechanical Department employees represented by the Brotherhood of Maintenance of Way Employees (BMWE) who are working on Track, Bridges and Buildings, Work Equipment Maintenance, or Welding Plant.

Article 5. Seniority Classes

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5.2 Bridge and Building Department

1. Bridge and Building Foremen:

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4. Bridge and Building Mechanics:

Construct, repair, dismantle, inspect and maintain bridges, buildings and other structures.

It is the position of the Carrier that the work in question was properly assigned to Sheet Metal Workers pursuant to Rule 34, Incidental Work, of the shop craft agreements, or, as here, Rule 34 of its Agreement with the SMWIA. Rule 34 reads:

34.1 In addition to the services specified in Rule 2 of this Agreement, Employees will also perform any and all other services incidental to a clean, safe, and operational facility. It is understood that such incidental work will be limited to no more than 4 hours in the work day and will not include the cleaning of rest rooms.

34.2 When the incidental work referred to above is of a type which is able to be scheduled in advance, qualified Employees more junior will be used whenever possible. For other incidental work the junior Employee who is available will be used.

The Carrier says that its assignment of the Sheet Metal Workers to perform the work at issue was in response to operational needs and workforce availability, and that the work was performed in compliance with all collective bargaining agreements in effect on the property.

The Carrier does not dispute that Rule 5.2 of the BMW Agreement, *supra*, describes the primary work functions of B&B Mechanics. However, the Carrier says, while “it is true that constructing and renovating offices is one of the primary functions of B&B Mechanics, it [Rule 5.2] does not reserve this work for B&B Mechanics to the exclusion of all other crafts.”

It is the position of the SMWIA, as with the Carrier, that the work performed and at issue is work of a nature within the boundaries of Rule 34, the Incidental Work Rule, and constituted a type of work that the SMWIA claims Pipe Fitters (Sheet Metal Workers) have, in fact, performed in the past.

In the opinion of the Board, there is no question that Rule 34 permits the performance of incidental work by and between employees, or elements of work that has historically by rule or practice been generally recognized or claimed as being reserved to a particular craft or class of employee. At the same time it is obvious that the impact of Rule 34 may not be held to extend to work covered by the scope of an agreement where there is no like, or reciprocal, rule. Thus, the provisions of Rule 34 may not be held to extend to the performance of work that has by rule or historical past practice been reserved to employees in which agreement language such as that contained in Rule 34 is not present.

In this latter regard, it is evident that the Carrier/BMW Agreement does not include a rule that reads the same as Rule 34 in the shop craft agreements. The Carrier/BMW Agreement contains an **intra-craft work** activities rule rather than **inter-craft** work rule, i.e., Article 2.1, Intra-Craft Jurisdiction. This Carrier/BMW rule contains language that is distinctly separate and apart from that contained in Article 34 of the shop craft agreements. This more restrictive Article 2.1 reads:

2.1 Employees will be allowed to perform tasks which are directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the Brotherhood of Maintenance of Way Employees.

Moreover, as concerns Carrier/SMWIA cited Rule 34, even assuming, *arguendo*, it had application to the dispute at issue, which it does not, it would have to be recognized, as the BMW argues, that construction of an office in a building is not incidental work, or work that could be readily be considered as incidental to “a clean, safe and operational facility.” It also seems to the Board that the fact that the Carrier assigned Sheet Metal Workers to work on construction of the office no more than four-hours in each work day, or the time limit proscribed by Rule 34, that this circumstance suggests that the Carrier recognized that the work in question was not incidental and thus did not, in fact, come within the scope of its Agreement with employees who are represented by the SMWIA.

The Board also finds it significant that although both the Carrier and the SMWIA urge that past practice supports their respective and joint positions, that no facts of record are shown to justify such a contention. This absence of documentation being contrary to numerous un rebutted statements, albeit of like form and substance, provided by the BMW to the Carrier during the handling of the claim on the property that the work of remodeling and construction of offices on the property has traditionally and historically been work assigned to B&B Mechanics.

Clearly, to sanction the Carrier contention that Rule 34 gives it absolute and unilateral discretion to cross craft and class lines for the performance of incidental work, despite the absence of a like rule being contained in the Carrier/BMW Agreement, would require that the Board write a new rule into the Carrier/BMW Agreement, or basically engage in an action that the parties have already decreed is not within the realm of Board authority.


In the light of the above considerations and overall study of the record the Board finds that the position of the Organization must be sustained.

AWARD:

Claim sustained.



Robert E. Peterson
Chair & Neutral Member

 - I DISSENT

Timothy W. McNulty
Carrier Member



Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA

~~August, 2000~~

JANUARY 4, 2001