

## **PUBLIC LAW BOARD NO. 6553**

<b>BROTHERHOOD OF MAINTENANCE</b>	)	
<b>OF WAY EMPLOYEES</b>	)	
	)	<b>AWARD NO. 3</b>
<b>And</b>	)	<b>CASE NO. 3</b>
	)	
<b>NORFOLK SOUTHERN RAILWAY</b>	)	
<b>COMPANY</b>	)	

### **STATEMENT OF CLAIM:**

Claim on behalf of R. L. Miller, et. al. for eight (8) hours straight time each day, beginning April 9, 2001 and continuing, that B & B Plumbers were assigned to perform B & B Mechanic work on the Harrisburg Division.

### **OPINION OF BOARD:**

Public Law Board No. 6553, 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, and that the Board has jurisdiction over the dispute herein.

As discussed in Award No. 1 of this Board, former Conrail Plumbers were transferred to the Bridge and Building Sub-department on the Carrier's Northern Region pursuant to the Conrail "carve-up" and the May 6, 1999 Memorandum of Agreement. On June 6, 2001, the Organization filed the instant claim, alleging that these B & B Plumbers have been assigned work routinely performed by B & B Mechanics, thereby infringing upon the seniority of the B & B Mechanics. The Organization contends B & B Plumbers have been assigned such work on a continuing basis. Specifically, the work has included repairing and installing whistle boards and crossing bucks, measuring bridge heights and clearances, painting walls, installing locks, building wooden shelves, installing floor coverings, pouring concrete retaining walls, repairing concrete steps and repairing steel right-of-way gates.

In support of its claim, the Organization relies upon the following provisions of the May 6, 1999 Memorandum of Agreement:

#### **SECTION 1 – SENIORITY GROUPS, CLASSES AND GRADES**

Rule 2 of the 'NW-WAB Agreement' (which, as provided in Article II, Section 1 of Attachment No. 1 will apply to Conrail territories allocated to and operated by NSR) is revised by adding the following to be applicable to the Conrail territories allocated to and operated by NSR:

**Rule 2 (h)** This section 2(h) applies only to the portion of Conrail to be operated by NSR. The listing of the various classifications is not intended to require the establishment or to prevent the abolishment of positions in any classification. The listing of a given classification is not intended to assign work exclusively to that classification. It is understood that employees on one classification may perform work of another classification and that the indicated primary duties do not restrict the use of employees to perform other work as provided in the NW/WAB BMWWE agreement.

**The seniority classes and primary duties of each class are as follows:**

**Bridge and Building Sub-department**

**B. Bridge and Building Roster:**

- 1. B & B Foreman**
- 2. Assistant Foreman**
- 3. B & B Mechanic**  
**Construct, repair and maintain bridges, buildings and other structures**
- 4. B & B Helper**  
**Assist B & B Mechanic**

**C. Plumber Roster:**

- 1. Plumber Foreman**
- 2. Assistant Foreman**
- 3. Plumber**
- 4. Plumber Helper**

**Assist Plumber**

**NOTE:** Such former Conrail Plumber Roster positions occupied on the effective date of this agreement will be attrited as the incumbents leave service as a result of promotion to non-agreement positions, voluntary exercise of seniority to another position, retirement, resignation, dismissal or death. For each of these classifications, once all the positions have been

**vacated the classification and roster will be eliminated. Thereafter, to the extent remaining plumbing duties are performed by BMWWE represented employees under the NW/WAB agreement, such work will done (sic) by B & B Mechanics or other employees on the B & B rosters.**

**The Organization also relies upon Rule 5 of the NW/Wabash July 1, 1986 Agreement as follows:**

**RULE 5 – SENIORITY RIGHTS**

**(a) Seniority rights of employees will be restricted to seniority established in a Grade or Grades on any seniority roster or rosters, and, except as provided for in Rule 8 (f) and Section (b) to Rule 11, they will have the right to exercise their preference to positions to which their seniority entitles them when forces are reduced, positions abolished, vacancies occur, new positions are created, and as provided for in Rule 17.**

**The Organization acknowledges that Carrier has the discretion to temporarily assign an employee to perform work of another classification to which he hold no seniority or qualifications. However, the Organization argues, Carrier is not permitted to use employees assigned to one classification to perform work of another classification on a daily and continuing basis without running afoul of the seniority rights established under the parties' Agreement.**

**The Carrier contends that Rule 2(h) of the May 6, 1999 Memorandum of Agreement expressly contemplates the assignment of B & B Plumbers to perform work of another classification, such as B & B Mechanics. Moreover, Carrier argues that the Organization has not shown that the disputed work has been exclusively reserved to B & B Mechanics on a system wide basis.**

**Based on our review of the record in its entirety, the Board concurs with Carrier's position in this case. The parties reached an understanding in the May 6, 1999 Agreement relative to the allocation of work assignments among the listed job classifications. The last two sentences of Rule 2(h) clearly state that the listing of classifications is not intended to secure work "exclusively" to any listed classification and that employees in one classification may perform work of another classification. The Organization argues that these rights are limited by the phrase "as provided in the NW/WAB BMWWE agreement," and that Rule 2(h) must therefore be read in conjunction with the seniority provisions of the Agreement. The Organization contends that Rule 2(h) should not be interpreted so as to abrogate carefully delineated seniority provisions which list B & B Mechanics and B & B Plumbers as separate and distinct classes with a distinct line of demarcation in the character of work accruing to each.**

It is understandable that the Organization presses for inviolability of job classifications based on seniority. Certainly, widespread practices which permit the indiscriminate transfer of duties from one job classification to another would lead to concern about the kind and amount of work that might be available to employees at different times.

However, the reality is that the parties negotiated new language which permits the Carrier to assign work as it did under the narrow circumstances of this case. Seniority rights cannot stand as a bar to such work assignments if the parties themselves have expressly provided that Carrier has the right to assign duties across classification lines. Rule 2(h) recognizes that the listing of the B & B classification is not intended to assign work exclusively to that classification and does not restrict Carrier from assigning B & B Plumbers other work covered by the Agreement.

Our conclusion is bolstered by the awards which have interpreted substantially similar language under the former Conrail agreement. See, Third Division Award Nos. 26761 (Marx) and 29582 (Meyers); Award No. 22 of Public Law Board No. 3781 (Blackwell); and Award No. 22 of Special Board of Adjustment No. 1016 (Dennis). In each of these cited cases, the Board determined that the Carrier had not violated the provisions of the agreement by assigning the work of one class of employee to another class.

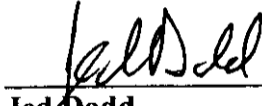
Based on all the foregoing, we must rule to deny the claim.

AWARD

Claim denied.

  
ANN S. KENIS, Neutral Member

  
Dennis L. Kerby  
Carrier Member

  
Jed Dodd  
Employee Member *discent*

Dated February 18, 2003.