

SPECIAL BOARD OF ADJUSTMENT No. 498

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

PARTIES:

VS.

GREAT NORTHERN RAILWAY COMPANY

AWARD IN DOCKET No. 10

STATEMENT

OF CLAIM: "Claim of the System Committee that:

(1) The Carrier violated the effective Agreement by assigning to the Traveling Pipefitters certain repairs and alterations to the low pressure steam heating system in the Whitefish, Montana, Passenger Depot and the District Offices in the same building, during the period of July and August, 1960.

(2) That B&B Service Foreman John Santana, B&B Service Foreman Wilbur Burr, B&B Pipefitter Harold Gage and B&B Pipefitter Edward Morrow each be now compensated at their respective pro rata rates for a proportionate share of the number of hours as was consumed by the Traveling Pipefitters and their Foreman in the making of the referred to repairs and alterations at Whitefish."

FINDINGS: The tripartite agreement of March 29, 1950 between the Carrier, the Brotherhood of Maintenance of Way Employes, and the Sheet Metal Workers International Association clearly allocates the type of work involved in this claim to M of W. employes, and provides that traveling pipefitters may be used by agreement with the General Chairman of BMW. No such agreement was obtained in this case.

The Carrier contends there has been a practice of using traveling pipefitters without agreement of the M of W. General Chairman which waives the necessity for such consent or amounts to an agreement that the use of such employes is appropriate.

A generally accepted principle regarding past practice is that practices in conflict with agreement provisions do not alter the agreement but simply bar retroactive claims. This principle negates that contention of the Carrier.

The Carrier shows that its records show only 432 hours of work performed in July instead of the 600 claimed and none performed in August as

claimed. In the absence of any evidence to substantiate the hours claimed, the claims can be sustained only to the extent of the work shown to have been performed by the records.

AWARD: Claim sustained for 432 hours.

(s) Dudley E. Whiting  
Dudley E. Whiting, Referee

(s) A. J. Cunningham  
A.J. Cunningham, Organization Member

(s) T. C. DeButts  
T. C. DeButts, Carrier Member

Dated at St. Paul, Minnesota,  
this 6th day of August, 1963.