

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20338  
Docket Number MW-20285

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: [Brotherhood of Maintenance of Way **Employes**  
(Burlington Northern Inc.)

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

(1) **The** Carrier violated the **Agreement when** it assigned the **work** of repairing **Truck No. 1617** to **Marshall Ford** in Vancouver, Washington (System File 403 F/MW-84(c) 4-12-72B).

(2) Traveling Maintainers C. Anderson and H. Fisher each be allowed two (2) hours and thirty (30) **minutes'** pay at their **straight-time** rate because of the violation referred to **within** Part (1) of this claim.

OPINION OF BOARD: **Claimants** herein were Traveling **Maintainers** assigned in the **Carrier's** Roadway **Equipment Repair Shops** located at Vancouver, Washington, **all formerly SP & S employees.** On February 15, 1972 a truck assigned to B & B Crew 33 required **an engine** tune-up and **was** taken to an outside garage **in** Vancouver for **the work.** The **Organization** alleges that this action **was** in **violation** of the **Agreement,** particularly Rule 55 **M and** the Note to Rule 55.

The pertinent Roles are as follows:

**"RULE 1. SCOPE**

A. These **rules** govern the hours of **service,** rates of **pay and working** conditions of **all employes** not above the rank of track inspector, track **supervisor** and **foreman,** in the **Maintenance** of Way and **Structures Department,** including employes in the former GN and SP&S roadway equipment repair shops and welding employes.

B. **The Maintenance of Way and Structures Department** as used herein **means** the Track **Sub-department,** the **Bridge and Building Sub-department,** the **Welding Sub-department,** the **Roadway Equipment Sub-department** and the **Roadway Machinery Equipment** and automotive **Repair Sub-department** of the **Maintenance of Way Department** as constituted on date of consummation of this Agreement.

"C. This Agreement does not apply to **employees** in the **Signal, Telegraph and Telephone Maintenance Departments,** nor to clerks. The sole purpose of including **employees** and **sub-departments** listed herein is to preserve pre-existing rights accruing to **employees** covered by agreements as they existed under **similar** rules in effect on the **CB&Q, NP, GN** and **SP&S railway companies** prior to date of merger; and **shall not operate to extend jurisdiction** or Scope Rule coverage to **agreements** between another organization and one or **more** of the **merging** companies which were in effect prior to the date. of merger."

"Rule 55 **CLASSIFICATION OF WORK**

**M.Traveling Maintainer** and Maintainer Mechanic

An employe skilled in and assigned to building (if not purchased) repairing, **dismantling** or adjusting roadway **machine equipment and machinery,** and on former SP&S certain repairs to **automotive** equipment.

**NOTE** to Rule 55: The following is agreed to with respect to the contracting of construction, maintenance or repair work, or **dismantling** work **customarily** performed by **employees** in the **Maintenance** of Way and Structures Department:

**Employees** included within the scope of this **Agreement-in** the **Maintenance of Way and Structures Department,** including **employees** in former **GN and SP&S Roadway Equipment Repair Shops** and **welding employees-perform** work in **connection** with the construction and **maintenance** or repairs of **and in** connection with the **dismantling** of tracks, structures or facilities located on the right of way and used in the operation of the **Company** in the **performance** of **common** carrier service, and work performed by **employees** of **named Repair Shops.**

By agreement between the **Company** and the **General Chairman,** work as described in the preceding **paragraph** which is **customarily** performed by **employees** described herein, may be let to contractors and be performed by contractors' forces. **However,** such work **may only** be contracted **provided** that special skills not possessed by the **Company's employees,** special **equipment** not owned by the **Company,** or **special material** available only when applied or **installed** through supplier, **are** required; or when work is such that the **Company** is not adequately equipped to handle the work, or when **emergency time requirements** exist which present **undertakings** not contemplated by the Agreement and **beyond** the **capacity** of the **Company's** forces. In the **event** the **Company**

"plans to contract out work because of me of the criteria described herein, it shall notify the **General Chairman** of the **Organization** in writing as **far in advance** of the date of the contracting transaction as is practicable and in **any** event not less **than fifteen (15)** days prior thereto, except in **'emergency time** requir-ts' cases. If the General Chairman, or his representative, requests a **meeting** to discuss **mat-ters** relating to the said contracting **transaction**, the designated representative of the **Company shall promptly** meet with **him** for that purpose. Said **Company and Organization** representative shall **make** a good faith **attempt** to reach an understanding concerning said contracting, but if no understanding is reached the **Company may** nevertheless proceed with said contracting, **and** the **Organization may** file and progress claims in connection therewith.

**Nothing** herein contained shall be construed as restricting the right of the Company to have work customarily performed by **employees** included within the scope of this Agreement **per-formed** by contract in emergencies that affect the movement of traffic when additional force or equipment is required to clear up such **emergency** condition in the shortest **time** possible."

**"RULE 69. EFFECTIVE DATE AND CHANGES**

A. This **Agreement shall** be effective May 1, 1971, and **shall** remain in **full** force and effect **until changed** or modified **as pro-vided** herein, or under the **provisions** of the **Railway Labor Act**, as **amended**.

B. This **Agreement supersedes all previous** and existing **agree-ments**, understandings and **interpretations which** are in conflict with this Agreement **covering employees** of the **former Great Nor-thern Railway Company**; the **former Northern Pacific Railway Com-pany**, the **former Chicago, Burlington & Quincy Railroad Company**, the **former Pacific Coast Railroad Company**; the **former King Street Station** and the **former Spokane, Portland & Seattle Rail-way Company** of **the craft** or class now represented by the **Organ-ization party** to this Agreement..

C. It is the intent of **this Agreement** to preserve pre-existing rights **accruing** to **employees** covered by the **Agreements** as they existed wider **similar rules in effect on the CB&Q, NP, GN and**

"SP&S Railroads prior to the date of merger; and shall not operate to extend jurisdiction or Scope Rule coverage to **agreements** between another organization and one or **more** of the **merging Companies** which were in effect **prior** to the date of merger."

Carrier first raises the **matter** of a **Third Party Notice** with respect to the **International Association of Machinists**. The record **indicates** that the **Machinists** were notified by this Division **and made an** appropriate response; there is no **impairment** of the Board's jurisdiction **in this matter**.

On the **merits**, Carrier **makes** a series of **arguments**. First Carrier asserts that in the absence of restrictions **in the Agreement**, it **has** the unabridged right to determine the **manner** in which work is to be **performed**. Carrier asserts further that the work of **repairing** the truck in question is not reserved exclusively to Maintenance of Way **employees**. Carrier states that the Scope Rule is **general in** nature and that the **Classification** of Work Rule (55) does not **grant** exclusive work rights. Carrier concludes that since the Petitioner has not **proved** that the work **in question** is within the scope of the controlling agreement, the Note to Rule 55 and Rule 69 (C) are inapplicable and no notice of intent to contract **was** required.

The issues raised by Carrier have been dealt with by this Board before. We have held **that** Rules 1 (c) and 69(c), by their clear and **unambiguous** language, preserve the rights accruing to **employees** under the **Spo-kane, portland and Seattle Railway Company Agreement** which existed prior to the **merger (See Award 20042)**. Further, we have held that Rule 55 classifies the work **coming** under the scope of the **Agreement (Award 19924)** and as a **basic principal**, such work belongs to those **employees** for whose benefit the contract was **made and may not be** assigned to others.

Petitioner **argues persuasively that under Rules 40 and 41** of the **SP&S Agreement** the **employees in the Classification** involved **customarily performed automotive** repair work. Evidence was presented on the property that **automotive repair work customarily performed by employees** in the **Roadway Equipment Repair Shop, Vancouver, Washington** was performed by others only after specific concurrence of the Organization had been obtained by Carrier. **Additionally, we** observe that the Note to Rule 55 specifically **alludes** to work which is **customarily performed** by the **employees rather** than the frequently argued doctrine involving work **exclusively** performed.

Carrier has presented **argument** but no evidence to support its position. The Rules and the evidence **produced** by Petitioner establish **the** validity of the **Claim** and it **must** be sustained.

Carrier argues that this Board is without authority to award **damages** and that **Claimants** suffered no loss of **earnings**. We have dealt **with** this issue in **depth** in Award 19899 and in numerous other Awards. As we said in Award 19924, **Claimants** lost their **rightful** opportunity to perform the work and are entitled to a monetary **claim**.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and **all** the evidence, finds and holds:

That the **parties waived** oral hearing;

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** this Division of the **Adjustment** Board has **jurisdiction** over the dispute involved herein; and

That the Agreement **was** violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

**Dated** at Chicago, Illinois, this **31st** day of July, 1974.