

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22374
Docket Number H-22096

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Rmloyes
(Burlington Northern Inc.

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

(1) The Agreement was violated **February 9, 10, 11 and 12, 1976** when **Bridge** and Building forces from Seniority District **No. 14** were used to perform work on Seniority District **No. 13** [System File **T-W-115C/MW-84(i) 4/30/76**]

(2) **B&B** Foreman **H. Solem**, First Class Carpenters **J. Kuntz**, **R. Hamel**, **O. Hagen** and **P. V. Mutnanski**, Second Class Carpenter **F. Hall** and Truck Drivers **D. Lang**, **R. O. Brokken** and **N. R. Fossum** each be allowed 20.4 hours of pay at their respective straight-time rates and 8 hours of pay at their respective time and one-half rates because of the aforesaid violation."

OPINION OF BOARD: On claim dates, Fargo Seniority District **14** Bridge **and Building Gang performed bridge repair work** in Seniority District 13. Claimants assert that (with exceptions not here applicable) seniority is restricted by districts - as specified in **Rule 6** - and thus, Carrier's action violated a number of agreement provisions.

Carrier has asserted that there was an "emergency" situation. **But**, we note that the damage occurred on a Saturday, and repair work did not commence until **Monday**. In any event, our review of this record fails to suggest that Carrier may properly defend its actions based upon an "emergency" concept.

In addition, Carrier asserts that the District **14** employees were **temporarily transferred** to perform the repair work; that the District **13** employees were employed on other projects; seniority does not establish rights of exclusivity to work; and that, regardless, Claimants were fully employed during the pertinent time.

Rule 11 specifies:

"A. An **employee may be temporarily transferred** by the direction of the **Company** for a period not to exceed six (6) months, from one seniority district or division to **another, and** he shall retain his seniority on the district or division from which transferred. Such **employee** shall have the right to work temporarily in his respective rank on the district or division to which transferred, if there are **no** qualified available **employees** on the district or division. The six (6) month period may be extended by agreement between the **Company and** the General. chairman. When released from such service the **employee shall** return to his former position."

We have noted the Carrier's "seniority" argument at Page 6, et seq. of **its** Submission, but we do not feel that said contention controls this dispute.

Award Ro. 20891 considered a **similar** dispute between these parties in which the Carrier assigned an **employee** from one seniority district to perform **work in another district**. (The **Board** held that **Carrier, by that action "...violated** the right of an employee holding seniority in that district to **perform** the work."; Carrier **stresses** that the Referee, in Award 20891, did **not** consider Rule 11. Rut, certainly Award 21678 - also between these parties - considered Rule 11 at length. In that **sustaining** Award, the **Board** found a "temporary" use, and assumed **arguendo** a "transfer." Rut, reasoned the **Board**, the **Carrier** controlled the **availability** of the admittedly "qualified" **employees**. No purpose is served by incorporating a **lengthy** exploration of the Rule 11 concept in this Award. Suffice it to say that even presuming that the parties **meant** for this type of **a circumstance to** generate a "temporary transfer" (rather than a more clearly defined personnel shortage) the matter has **been** disposed of by Award 21678. Absent a **finding** that said Award is palpably erroneous, we are compelled to follow it.

Our Award 19899 and subsequent Awards have **fully explored** the damage question. Award 22194 **is not persuasive to a contrary** conclusion.

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 :


Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1979.