

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award No. 29713

Docket No. SG-29682

93-3-91-3-28

The Third Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway systems (SOU):

Claim on behalf of Signal Foreman H. J. DeLoach, Signal Foreman of Lines West Signal Gang currently working off of their seniority District on the N&W Railroad, for the following:

(a) Carrier violated the letter of understanding, dated August 31, 1988, which permitted the one Lines West District Signal Gang to work on the N&W Railroad Installing crossing signals, when they required Signal Foreman H. J. DeLoach to work off of his Lines West Seniority District to protect his seniority as a foreman when then basis for the employees to work off of their Seniority District was to be on a Voluntary basis.

(b) Carrier now be required to compensate Signal Foreman H. J. DeLoach for mileage expense and travel time from the time he left his Seniority District until he returned to his Seniority District in the amount of 17 1/2 hours travel time at his straight time rate of pay and for mileage expense at 25.5 cents per mile for 981 miles which was the travel time and mileage incurred off of his seniority district account of not being afforded the voluntary provisions while working off of his home seniority district during the month of October 1989.

(c) Claim is to be a continuing claim to continue as long as the lines West Signal Gang is working on the N&W with travel time and mileage expense being added to this claim each month Claimant is required to work off of his assignment.

Travel time and mileage incurred by Claimant is as follows:

10/09/89	Cincinnati, O to Plymouth, IN	247 miles	4 1/2 hrs
10/12/89	Cincinnati, O to Plymouth, IN	247 miles	4 1/2 hrs
10/15/89	Cincinnati, O to Plymouth, IN	247 miles	4 1/2 hrs
10/19/89	Cincinnati, O to Plymouth, IN	120 miles	2 hrs
10/29/89	Cincinnati, O to Plymouth, IN	<u>120</u> miles	<u>2</u> hrs
Total for month		981	17 1/2 hrs"

G.C. file SR-45-89. Carrier file SG-ATLA-89-31. BRS Case No. 8204.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization signed an August 31, 1988 Letter of Understanding with the Carrier's Director of Labor Relations to the effect that:

"...one Southern Signal Gang may be used on NW seniority regions (West Region East, West Region West) if the following conditions are followed:

1. Work to be performed would be limited to Highway crossing signal work at the locations listed on the attached list.

2. The only gang to be used is Southern Lines West District Gang # 1. (This does not preclude the use of NW agreement employees).
3. Gang members of the Southern Lines West District Gang # 1 who work on the NW Lines will be on voluntary basis."

The same parties signed a supplementary agreement on July 20, 1989 which stated the following, in pertinent part:

- "1. The highway crossing work as referred to in Item 1 of the August 31, 1988 letter has been completed.
2. The scheduled work load on the Southern Railway at this time is such that the signal gang used to perform the above referenced work will have to be abolished. There are (15) additional crossing signals on the Norfolk and Western Railway at locations as indicated on the attached list that need to be timely installed.
3. In order to keep the Southern Signal Gang working and eliminate the necessity to contract out the crossing work, it is agreed that the work will be performed by the Southern Signal Gang under the same conditions as outlined in the August 31, 1988 letter agreement.
4. The parties further agree to meet upon a thirty (30) day written notice from either party to formulate a system-wide arrangement to allow for the use of signal gangs to perform signal work outside their agreement geographical boundaries."

On December 1, 1989, a claim was filed by the Organization alleging that the Carrier had violated the mutual understandings in these letters when it required a new foreman of the Lines West Signal Gang, who is Claimant to this case, to work outside of his seniority district. The former foreman of the gang died on September 13, 1989, and the Claimant bid on the West Signal Gang Foreman's position, which was rebulletined as permanent, in order to protect his foreman's seniority. According to the claim:

"...H. J. DeLoach (the Claimant) had to bid on this position to protect his foreman's seniority but did not agree to work off of his seniority district on this voluntary basis and because the Carrier refused to make arrangements that (were) mutually agreeable to both parties Mr. DeLoach was forced to work the assignment or give up his foreman's seniority through no fault of his own."

Relief requested was travel time and mileage incurred by the Claimant on various work days from October 9, 1989, through October 29, 1989, because of his travel from Cincinnati, Ohio, to Plymouth, Indiana. This amounted to 17.5 hours of travel time and 981 miles. According to the denial of the claim by the Carrier:

"Mr. DeLoach (had) bid on a temporary foreman's position on August 28, 1989, and at the time there was no protest from Mr. DeLoach regarding his working on a temporary basis on the Northern Region. On September 13, 1989, due to the death of J. E. Naylor, this temporary position was readvertised as permanent. In order to protect his seniority, Mr. DeLoach bid and was awarded the permanent foreman's position. Even though Mr. DeLoach now protested his working on the Northern Region there was no comparable positions to which he could be assigned on the Southern Region therefore he was required to fill the position accordingly."

As the claim was being progressed on property the Organization amended requested relief to status of a continuing claim for "...each month (the) Claimant is required to work off of his assignment."

The facts of record show that when the Claimant had bid on and received the temporary position as Signal foreman in August of 1989, he worked the Northern Region. The temporary position was readvertised as permanent with the death of the Claimant's co-worker who was foreman of the Southern Signal gang. The Claimant bid on it in order to keep his seniority, as stated, and continued doing, effectively, the same thing. Evidently, after the Claimant received the permanent position, he changed his mind about his willingness to work the Northern Region and to work only the Southern Region. Since the Carrier would not permit him to work the Southern Region, the claim was filed. According to the Organization, the Carrier is in violation of provisions of the August 31, 1988 Letter of Understanding because, according to the

Organization's letter dated February 28, 1990 to the Carrier, the "...Carrier was not willing to work out an arrangement to bid on the job but not (allow the Claimant to) take the position until the gang was back on the Southern Railway Liens West Seniority District..."

The parties signed a supplementary agreement to the August 31, 1988, one, as noted in the foregoing. That agreement outlined factual issues related to available work for the Southern Signal gang. The Organization and the Carrier clearly agreed, in the supplementary agreement dated July 20, 1989, that the Southern Signal gang would have to work other seniority districts or the gang would have to be abolished. There was other work to be done on some 15 additional crossing signals on the Norfolk and Western. One option was for the Carrier to contract this work out. Another was to have it done by the Southern Signal gang. By Agreement, the parties opted for the latter. Thus the Southern Gang, in accordance with the July 7, 1989 Agreement, continued to work, in this case, on the northern region. No one had a problem with that, including the Claimant, as far as the record shows, until he bid for, and was awarded, the permanent position of foreman after his colleague died who had held that position, or until he went from temporary to permanent status as a foreman. Apparently, it is the belief of the Claimant that after he made that move, he had a right to a special, personal arrangement with the Carrier to work only the Southern Region. He did not, for a number of reasons. First of all, an individual contract between the Claimant and the Carrier, or some sort of "arrangement" as intimated by the Organization, is improper under a union contractual arrangement. The Claimant has no more, nor no less, rights or privileges than his fellow collective bargaining unit members. Secondly, since the basis for the instant claim is found in the language of the provisions of the August 31, 1988 Agreement, to which the supplementary agreement of July 20, 1989 refers to, the intent of that language must be underlined. This language does not require any member of the Southern Signal gang to work outside the Southern District as the Claimant correctly notes, irrespective of what position in the gang one holds. The Claimant's option, then, was to exercise his rights under this language and not work outside of his district. Obviously, in so choosing, he had to take into consideration the facts as outlined in his own Organization's and the Carrier's supplementary agreement of July 20, 1989.

On basis of the record as a whole the instant claim cannot be sustained.

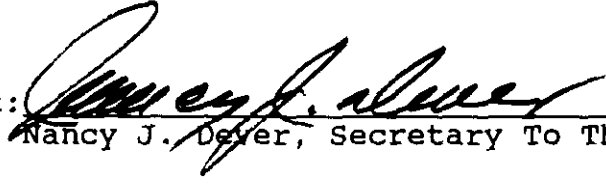
Form 1
Page 6

Award No. 29713
Docket No. SG-29682
93-3-91-3-28

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever, Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.