

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30022  
Docket No. SG-30713  
94-3-92-3-500

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(CSX Transportation, Inc. (former Chesapeake  
(and Ohio Railway Company)

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of  
the Brotherhood of Railroad Signalmen on the  
CSX Transportation (former C&O):

Claim on behalf of R.M. Roe et al. Carrier's File No. 15  
(90-68 & 69). Gen'l Chmn's. File No. 90-15-CD. BRS File  
Case No. 8727-C&O.

Claim reads as follows:

## CASE No. 1

Statement of Claim:

- (a) Carrier violated the parties' Schedule Agreement, as amended particularly Rule 34 - Seniority Districts - Limits, when on or about Tuesday, May 1, 1990, Carrier required or otherwise allowed Signal employees from the Russell seniority district to cross the Russell/Cincinnati seniority district line established at Mile Post 529.5 referred to in Rule 34 without notice or negotiations pursuant to Rule 68 to perform non-emergency signal work.
- (b) As a consequence of the above violation, Carrier be required to compensate Claimants named below at their applicable rate of pay for all time including over time, if any, employees of the Russell seniority district performed work on the Cincinnati seniority district, due to a loss of earning and work opportunity:

R.M. Roe	618900	Leading Signal Maintainer
O.R. Osborne	624872	Signal Maintainer
J.R. Patrick	628910	Signal Maintainer

\* \* \*

CASE No. 2

Statement of Claim:

- (a) Carrier violated the parties' Schedule Agreement, as amended particularly Rule 34 - Seniority Districts - Limits, when on or about Monday, May 14, 1990 Carrier required or otherwise allowed Signal employees from the Russell seniority district to cross over the Ashland seniority district line located at Mile Post 0.75 as referenced in Rule 34 to perform non-emergency signal work without notice or negotiations pursuant to Rule 68.
- (b) As a consequence of the above violation, Carrier be required to compensate Claimants named below at their applicable rate of pay for all time including overtime, if any, employees of the Russell seniority district performed non-emergency work on the Ashland seniority district, due to a loss of earning and work opportunity:

<u>Name</u>	<u>CSXT ID No.</u>	<u>Force No.</u>	<u>Position Assigned</u>
J.R. Ward	618618	7G15	Leading Sig. Maintainer
C.D. Brown	625452	7G15	Signal Maintainer
A.R. Tackett	626886	7G15	Signal Maintainer
W.D. Chapman	617639	7G41	Leading Sig. Maintainer
B.O. Chapman	617315	7G41	Signal Maintainer
C.L. Warnock	622888	7G41	Signal Maintainer"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

This dispute consists of two claims which are similar in nature; the only differences being the dates, locations, and

identity of the Claimants. In Case No. 1, the Carrier used Russell Seniority District signal employees to perform work on the Cincinnati Seniority District between May 1 and 10, 1990. In Case No. 2, the Carrier used Russell Seniority District signal employees to perform work on the Ashland Seniority District between May 14 and 23, 1990. The work performed by the Russell employees in each of these cases involved working with undercutting operations.

The Carrier asserts it was privileged to move the Russell employees to other seniority districts. It first cites Rule 36 - Temporarily Transferred, which reads as follows:

"Employees temporarily transferred by direction of the management from one seniority district to another, will retain their seniority rights on the district from which transferred. Except for temporary service, employees will not be transferred to another seniority district unless they so desire."

According to the Carrier, this Rule recognizes its right to temporarily transfer employees from one district to another. The Carrier further states an emergency condition existed because it did not have sufficient employees on the Cincinnati or Ashland Districts to perform this work. It has bulletined vacancies, but either got inadequate or no responses. Finally, the Carrier says the work performed by the Russell employees was necessary to avert emergencies.

The Organization, on the other hand, relies upon Rule 34 - Seniority District - Limits, which reads in part as follows:

"(a) Seniority rights of employees will extend over the territory comprising a seniority district except as provided in Section (d) of this Rule and by Rule 43. The seniority districts and their limits are as follows:"

First of all, the Board rejects any suggestion that an emergency existed. An emergency, by definition is something unforeseen. We do not apply that term to inadequate staffing. While performing preventive maintenance may well prevent emergencies, this does not cause us to characterize this as emergency work. If the Carrier's argument had validity, all maintenance work on the right-of-way would be considered emergency work.

We also do not find support for the Carrier's argument in Rule 36. That Rule merely states how an employee's seniority might be affected by working off of his or her seniority district. It does

not provide the vehicle for moving the employee, nor does it address how the employee is to be compensated. The Carrier is constrained in its movement of employees by Rule 34. The establishment of seniority districts means employees must protect and have the right to protect all work within their district and cannot be moved beyond their district. To get around this Rule, the Carrier must be able to rely upon something more specific than Rule 36.

As the Carrier has not shown it had the right to use the Russell District employees in either the Cincinnati or Ashland Seniority Districts, the employees of those districts had the exclusive right to perform the work which is the subject of these claims. The Agreement, therefore, was violated, and the claims are sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.