

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30245
Docket No. SG-30912
94-3-92-3-783

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Union Pacific Railroad:

- (A) Claim on behalf of M. T. Burke for payment of five hours at the overtime rate account Carrier violated the current Signalmen's Agreement, particularly Rules 18, 20, 52, and 61, when it assigned an employee from another seniority district to perform work in the Claimant's seniority district on June 6, 1991." Carrier File No. 910726. BRS Case No. 8827-UP.

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.

The initial claim in this dispute made reference to an action that allegedly occurred on June 6, 1991.

On the property, the Carrier repeatedly pointed out that the incident in question occurred on June 7, 1991, and, in fact, the Organization (in the early stages of handling on the property) conceded that June 7, 1991, was the actual date of the incident.

The Organization has cited various Rules provisions concerning seniority, seniority districts, etc., and objects to the fact that, on June 7, 1991, the Carrier assigned an employee from Seniority District No. 6 to perform work in Seniority District No. 7.

The Carrier does not deny that it took such action but states that its action was specifically permitted by Rule 34 of the Agreement, which gives the company the latitude to use employees off their home seniority district into another, as needed, since the Rule advises that employees temporarily transferred by direction of the Carrier from one seniority district to another will retain their seniority rights on the district from which transferred. Moreover, the employee from District No. 6 was used because he was "closer" to the work which was required to be done.

The Organization notes that the employee who was used was only approximately 13 miles closer than the Claimant.

The matter of the difference in the day has a significant bearing since the Claim is otherwise time-barred, based on the assertion that it occurred on June 6, 1991. In our view, since there is absolutely no question that June 7 was the date of the incident, and the misstatement of the date was corrected in the initial stages, it would be a preference of form over substance to rule the Claim untimely filed.

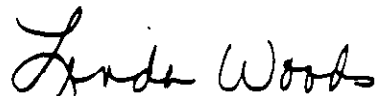
We have read Rule 34 concerning temporary transfers but the facts of this dispute do not lead us to conclude that the action involved here was a transfer within the meaning of that Rule.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.