

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30484  
Docket No. SG-30352  
94-3-92-3-68

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(National Railroad Passenger Corporation  
( (AMTRAK)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation (former NY&NH):

Claim on behalf of G. Perlman for two and one-half (2.5) hours at his straight time rate of pay and 132 miles at 26.5 cents per mile per day, account of Carrier violated Rules 17, 18 and 20, when it failed to reimburse him for travel time and actual expenses incurred."

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.

Certain facts are not in dispute. Claimant was headquartered in Providence, Rhode Island. He was the senior bidder for a Signal Foreman position at New London, Connecticut, where he would be supervising Inspectors. Inspectors must pass an examination. Since Claimant had never taken the examination himself, Carrier deemed him not qualified and published a bulletin stating there were no qualified bidders.

The Organization alleges that Claimant was thereafter ordered by his supervisor to report to New London to fill the vacancy on a temporary basis. The Rules cited provide for payment of travel time and expenses when an employee is "... sent from his home station to perform work ...."

Carrier denies that Claimant was so ordered. Its position is that he was merely afforded an opportunity to familiarize himself on the position to become qualified.

The key to this claim is whether Claimant was ordered to fill the vacancy or just given the option of doing so. On this point, the record sets up an irreconcilable dispute of fact. It is well established that it is not the province of this Board to resolve factual disputes. Such circumstances leave the Board with no choice but to dismiss the claim. See Second Division Awards 7051, 12294, Third Division Awards 25962, 28790, 28794, 29105, 29376, and Fourth Division Award 4434.

AWARD

Claim dismissed.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.