

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30721
Docket No. SG-30953
95-3-92-3-940

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen:

Claim on behalf of D. O. Bantilan, et al., for payment of an amount equal to the hours worked in Seniority District 9 by employees from Seniority District 7, account Carrier violated the current Signalmen's Agreement, particularly Rule 34, when, from June 23, 1991 until September 12, 1991, it assigned employees from Seniority District 7 to perform work in Seniority District 9 without the agreement of the Brotherhood's General Chairman, and denied the Claimants the opportunity to perform the work in their district."

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.

At issue in this case is application of Rule 34 of the Agreement between the Parties. Rule 34 reads as follows:

"Rule 34 - TEMPORARY TRANSFER - OTHER SENIORITY DISTRICTS

Employes temporarily transferred by direction of the Management from one seniority district to another will retain their seniority rights on the district from which transferred and will be allowed actual expenses while off their seniority district. Except for temporary service, employes will not be transferred to another district without their consent.

NOTE: Temporary, for purposes of this rule, will be sixty (60) days and may be extended if agreed to in writing by the parties signatory to this agreement."

The basic facts precipitating this claim are not in dispute. On April 24, 1991, Carrier assigned employees from Seniority District No. 7 to perform temporary service in Seniority District No. 9. Those employees continued working in District No. 9 after the 60-day period had expired. In a letter dated August 19, 1991, the Organization initiated a claim alleging violation of Rule 34. On or about September 12, 1991, Carrier removed the District No. 7 employees from District No. 9.

By letter of October 17, 1991, Carrier denied the Organization's claim, contending that the Claimant's had not been deprived of any work opportunity, and, further, that the 60-day temporary period had been extended with the consent of the District No. 7 employees involved. That denial was appealed by the Organization on November 18, 1991. The claim was subsequently progressed in the usual manner. Following conference on the property on June 9, 1992, the matter remained unresolved.

Carrier's primary rationale for extending the time limits set forth in Rule 34, is that the employees involved consented to the extension. Such a defense is without merit. Rule 34 specifically provides that the sixty-day limit may be extended "if agreed to in writing by the parties signatory to this agreement." (Emphasis added.) The employees of Division No. 7 were not "signatory" to the agreement, and Carrier may not modify the provisions of the agreement by negotiating exceptions with individual employees. The meaning of Rule 34 clearly implies that a duly authorized representative of the signatory organization must agree in writing to extension of the sixty-day limit.

While there is some dispute concerning communications between the parties prior to August 19, 1991, it is unrefuted on the record that by letter of that date, received by Carrier on August 27, 1991, the Organization formally notified Carrier that it did not consent to the continued assignment of Division No. 7 employees to Division No. 9. It is also unrefuted that Carrier did not ultimately remove the employees in question until September 12, 1991.

In Third Division Award 29381, this Board held as follows:

"...this Board notes that a number of Awards of this Board and Special Boards of Adjustment which have

required monetary payments in established cases where employees of one seniority district were used to perform work in a different seniority district. The rationale behind these decisions is that bringing employees from one district to work in another district deprives employees with seniority rights in the district where the work is performed of contractually secured work opportunities. If the Carrier is permitted to move employees from one district to another, without payment to the employees deprived of the work opportunity, the seniority provision, mutually developed by the parties and written into their Agreement, is vitiated."

In light of the foregoing, Claimants are entitled to monetary compensation equal to the hours worked by the Division No. 7 employees in question from June 23, 1991 until their removal from Division No. 9 on September 12, 1991. Such amount shall be equally divided among Claimants.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of January 1995.