

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30984
Docket No. SG-30831
95-3-92-3-628

The Third Division consisted of regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Burlington Northern Railroad

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad:

Claim on behalf of J.F. McDowell:

- (a) The Carrier violated our current Agreement, particularly Rule 21, Rule 22, Rule 41, and appendix F (Implementing Agreement No. 1), Article I, Section 2, para. 2, when they assigned an employee with no Northern Pacific prior seniority rights to the position of Traveling Signal Maintainer, headquartered at Pullman, WA, in favor of assigning Mr. McDowell.
- (b) The Carrier should now be required to assign Mr. McDowell to the Signal Maintainer position at Pullman, Washington, and compensate him per Rule 41-G, plus overtime he would have earned on that position, until assigned." G.C. File Case No. SP-28-91. Carrier File No. 1SI 91-09-17. BRS File Case No. 8810."

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.

In this claim, the Organization asserts a violation of claim as "prior rights" under the following contract language:

**"ARTICLE I
CONSOLIDATION OF SENIORITY DISTRICTS**

Section 2.

2. Each employee with seniority date as of date of this agreement will have preference rights and obligations to maintenance work opportunities in territory where assignments cover territory exclusively within his pre-existing seniority district regardless of standing on the roster for the new consolidated district."

As remedy for the asserted violation, the Organization seeks damages under Rule 41:

"Rule 41

- G. If successful applicant is not placed upon position within the specified time limit, the successful applicant thereafter will be paid the rate of the position awarded plus an additional \$3.00 per working day until such time as he is transferred thereto."

The crux of the dispute is readily summarized by reference to the following exchange of positions between Carrier and the Organization on the property:

"The territorial limits of the position headquartered at Pullman, Washington is exclusively on the Northern Pacific pre-existing seniority district, and as such, should have been assigned to Mr. McDowell, who was the senior applicant with prior Northern Pacific seniority rights. . . . Mr. McDowell had a Northern Pacific seniority date on September 1, 1972, the date of our current Agreement, and has preference rights to this territory. The incumbent, who was assigned in favor of Mr. McDowell, does not have preference rights to this territory."

"The position in question does not perform maintenance work exclusively within the pre-existing seniority district and was properly assigned to the senior employee from the consolidated seniority district. This position performs maintenance duties on rail lines formerly owned by the Milwaukee Road and subsequently purchased by the Burlington Northern. By no stretch of the imagination can these locations be considered territory that was exclusively within the pre-existing seniority district. The Carrier has simply applied the provisions of Appendix F as they are written. The position in question has been properly assigned to the senior bidder from the consolidated district."

Even though the equities may favor the employees in this claim, the plain unambiguous contract language defeats the claim. The Rule in question states without qualification that the prior rights arise ". . . in territory where assignments cover territory **exclusively** within . . . pre-existing seniority district . . .". Even though the former Milwaukee Crossings are viewed by the Organization as a de minimis variation from the exclusivity requirement, the Rule provides for no deviation at all. Nor is the Organization's reliance on alleged past practice convincing. The Board has no alternative but to deny the claim under the plain Agreement language presented on this record.

AWARD

Claim denied.

ORDER

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 26th day of July 1995.