

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31089
Docket No. SG-30962
95-3-92-3-850

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Railroad:

Case No. 1

Claim on behalf of J.R. Nixon for payment of sixteen (16) hours at his straight time rate account Carrier violated the current Signalmen's Agreement, particularly the Agreement of April 6, 1971 regarding Special Signal Technician positions, when it allowed or permitted an employee from another district to perform work in the district assigned to the Claimant on August 21 and 22, 1991. Carrier's File No. Sig 37-49. General Chairman's File No. SWGC-377. BRS File Case No. 8922-SP.

Case No. 2

Claim on behalf of J.R. Nixon for payment of eight (8) hours at his straight time rate account Carrier violated the current Signalmen's Agreement, particularly the Agreement of April 6, 1971 regarding Special Signal Technician positions, when it allowed or permitted an employee from another district to perform work in the district assigned to the Claimant on September 10, 1991. Carrier's File No. Sig 37-50. General Chairman's File No. SWGC-369. BRS File Case No. 8921-SP."

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 contends that Carrier violated the "Special Signal Technician's Agreement" dated April 6, 1971. Specifically, it asserts that this violation occurred when Carrier assigned a Special Signal Technician from the Western Division, to perform work on the Woodland District, which is part of the Sacramento Division. The Organization maintains that Claimant, a Special Signal Technician in the Sacramento Division should have performed the work.

Accordingly, and for the foregoing reasons, the Organization asks that the claim be sustained.

Carrier argues that it did not violate the Agreement. It submits that according to the Memorandum of Agreement dated September 19, 1989 (SIG 2-27), a "Signal Technician shall be assigned to a single operating division as they currently exist." According to Carrier, the area in question, Woodland District, was part of the Overland Operating District which incorporated all of the Sacramento and part of the Western Divisions. Therefore, it argues a Western Division employee was properly used to meet the service needs of Carrier.

In addition, Carrier asserts that Claimant was fully employed on the claim dates and, therefore, suffered no loss of earnings. Thus, it submits that even if the Agreement was violated, Claimant is not entitled to any additional compensation. Accordingly, for these reasons, Carrier asks that the claim be denied.

After a review of the record evidence, we conclude that the claim must be sustained, in part. The evidence indicates that Carrier has gone beyond the permissible limits in defining an "Operating Division."

However, as to a remedy, the Carrier is correct in its assertion that the Claimant has not suffered any loss of compensation, therefore, there is no entitlement under the provisions of the Agreement. As to remedy for the loss of a work opportunity, this argument was not raised by the Organization on the property. Therefore, it cannot now be raised before this Board.

Accordingly, and for the foregoing reasons, the claim is sustained, in part.

AWARD

Claim sustained in accordance with the Findings.

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 1st day of September 1995.