

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32217
Docket No. MW-31284
97-3-93-3-295**

The Third Division consisted of the regular members and in addition Referee W. Gary Vause when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier advertised a Foreman Catenary position headquartered at Odenton M/W Base, Maryland to extend the foreman's territory to include the Baltimore work zone (System File NEC-BMWE-SD-3016 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall rescind Advertisement No. 669 and advertise the position with proper territory designations or post a correction notice notifying the entire Division of the correct territory as defined in the Agreement.”**

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 were given due notice of hearing thereon.

The issue in this case is whether the Carrier violated the Agreement by combining two work zones in Advertisement No. 669 dated November 4, 1991 for one Foreman Catenary position at Odenton MW/Base, Maryland, OLF 2-1.

The Organization bases its claim upon its interpretation of Rule 15 of the Agreement, which states:

"RULE 15
SENIORITY DISTRICTS - ELECTRIC TRACTION EQUIPMENT

The following shall be separate seniority districts:

1. Washington, D.C., M.P. 134.9 to East of Holmes Tower, M.P. 76, Harrisburg to Philadelphia.
2. East of Holmes Tower, M.P. 76 to Harold Tower, N.Y. (including Sunnyside Yard).

Working zones within the seniority districts may be established, by Agreement, in writing, between the General Chairman and Chief Engineer."

The Organization further relies upon its interpretation of the Electric Traction Work Zone Agreement between the Organization and Carrier, updated as of October 1, 1987, regarding work zones for positions headquartered at Odenton and Baltimore, Maryland.

"AGREEMENT

Philadelphia, PA

IN ACCORDANCE WITH THE PROVISION OF RULE 15 OF
THE AGREEMENT EFFECTIVE MAY 19, 1976, BETWEEN THE
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NORTHEAST CORRIDOR AND THE PENNSYLVANIA
FEDERATION OF THE BROTHERHOOD OF MAINTENANCE OF

**WAY EMPLOYES CLASSIFIED THEREIN, AND WITH THE
APPROVAL OF THE INTERESTED PARTIES SIGNATORY TO SAID
AGREEMENT....**

IT IS AGREED:

(January 17, 1985 Agreement)

- 1. Working zones on the Baltimore Division for Electric Traction Department under Supervisor Electric Traction, Baltimore, Maryland.**

Foreman Catenary, Foreman Substations, Gang Foreman Catenary, Gang Foreman Substations, Gang Foreman M.W. Electricians, Linemen, Substation Electricians and M.W. Electricians, Odenton, MD.

Main Line Northbound home signal Winans MP 103.3 to Washington Terminal and Capitol Substation.

Foreman Catenary, Foeman Substation, Gang Foreman Catenary, Gang Foreman Substation, Gang Foreman M.W. Electricians, Linemen, Substation Electricians and M.W. Electricians, Baltimore, MD.

**Main Line Gunpow River Bridge MP 79.0 to northbound home signal Winans MP 103.3.”
[Underscoring in the original.]**

The Organization claims that the Carrier violated the Agreement on November 4, 1991 when it posted Advertisement No. 669 for one Foreman Catenary OLF 2-1 (vice: J. F. Murter), at headquarters Odenton M/W Base, Maryland, combining two work zones in the following territory: “MP 79 (Gunpow) to, and including, Washington Terminal.”

When vacated by Murter on October 22, 1991, the position encompassed only one work zone. Murter had been awarded the position on June 25, 1991 pursuant to

Advertisement No. 655, which described the Foreman Catenary OLF 2-1 position (vice: W. Foura) territory as follows: "MP 103.3 (Winans) to, and including, Washington Terminal."

Foura had held the position since June 24, 1987 pursuant to Advertisement No. 542, which listed the Foreman Catenary OLF 2-1 position with the following territory description encompassing the same two work zones which later were included in Advertisement No. 669: "MP 79 (Gunpow) to and including Washington Terminal."

The Organization asserts that the Carrier previously corrected advertisements which were bulletined in violation of the Agreement. The Organization supports this claim by reliance upon an October 27, 1988 letter from J. A. Early, Assistant Chief Engineer.

The Organization argues that Rule 15 is clear and unambiguous and that it specifically stipulates that working zones within the Electric Traction Department are established by written agreement between the General Chairman and the Carrier's Chief Engineer. The parties entered into a Work Zone Agreement, updated on October 1, 1987, which specifically stipulates that the Catenary Foreman headquartered at Odenton, Maryland, will have a work zone on the main line from the northbound home signal at Mile Post 103.3 to the Washington Terminal and Capital Substation. The Organization asserts that the only change that can be made to the respective work zones shall be by agreement between the General Chairman and the Chief Engineer. When Carrier advertised Bulletin No. 669 with multiple work zones, not contemplated by the Work Zone Agreement, it thereby violated both the Work Zone Agreement and Rule 15.

The Carrier argues that the question of whether an employee can be assigned work in two work zones already has been settled in the affirmative by decisions of the Board. The Carrier asserts that the appropriate question in this case is whether the advertisement can accurately set forth the range of territory for which the Foreman will be held accountable and upon which the successful applicant will be selected.

The Carrier further argues that the Organization failed to prove that the Work Zone Agreement restricts advertised territories to single working zones. The fact that the Organization successfully argued its position in the past before a subordinate official of the Carrier has no bearing in this case because many prior Awards of the Board have established that erroneous settlements by subordinate officials are not precedential or

binding. The history of the position in question contradicts the asserted effect of the subordinate officials' decision. Furthermore, the Organization abandoned a similar claim regarding a Bridge Inspector position over a year before the instant claim was initiated.

The Organization has the burden of proof to establish a violation of Rule 15 and/or the Work Zone Agreement. Based upon careful review of the record and in consideration of the arguments made by the parties, the Board finds that the Organization failed to meet that burden of proof.

Although the Work Zone Agreement delineates two separate work zones for Catenary Foremen, it does not contain a specific prohibition against advertising a position which incorporates two work zones. The record shows that positions are advertised with territorial boundaries for purposes of ensuring that the assigned employee possesses the requisite qualifications for the position, and for purposes of overtime assignments. The Organization failed to establish how the advertisement of a position with two working zones, under the circumstances of the instant case, is inconsistent with the underlying concerns of qualification and overtime assignment.

The Carrier argues that when it advertised the Foreman Catenary position OLF 2-1 on November 4, 1991, it merely returned the position's territory to the full range that it previously had covered for four years since its inception up until the previous June. The Carrier cites Award 1 of Public Law Board No. 3932 to support its position. That Award is not precisely on point as it deals with a compensation claim alleging that the Carrier improperly allowed another employee to perform service that Claimant was entitled to perform under the Agreement. However, the decision is relevant and persuasive in that the Board therein recognized that the Agreement allows for cross-zone service. The same result was reached in Third Division Award 26372.

The fact that the Organization may have abandoned similar claims in the past has no bearing on the analysis of this case. The letter by the Assistant Chief Engineer dated October 27, 1988 also has no bearing on this case because an erroneous interpretation by a subordinate official is not precedential or binding on the Carrier.

In summary, the Organization failed to establish a violation by the Carrier.

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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 17th day of September 1997.