

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32510
Docket No. SG-33573
98-3-96-3-918**

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

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):

Claim on behalf of A. W. Borm for payment of 80 hours at the straight time rate and 30 hours at the time and one-half rate, and on behalf of M. J. Sullivan for payment of 48 hours at the straight time rate and 22 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 34, when it transferred employees from another seniority district to the Claimants' seniority district for more than 60 days without the agreement of the Organization. Carrier's File No. 5950415. General Chairman's File No. 51345716. BRS File Case No. 10051-UP.”

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.

This claim involves an alleged violation of Rule 34 - TEMPORARY TRANSFER - OTHER SENIORITY DISTRICTS which 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 fact situation which gave rise to this claim, and which incidentally is uncontroverted in the case record, reveals that on some unspecified date in February 1995, Carrier transferred the members of Mobile Signal Gang No. 2680 from the Wyoming seniority district to the Nebraska seniority district to perform unspecified work on an on-going signal project on the territory of the Nebraska seniority district. The named Claimants in this dispute were members of Signal Gang No. 5166 on the Nebraska seniority district. The case file does not indicate whether or not the two signal gangs worked together on the same project. The closest the parties came to this type of work identification is found in Carrier's uncontroverted statement which said: "... I understand that all Claimants named in the claim have been allowed to work the same number of hours as Gang 2680 worked during this period."

The Wyoming seniority district gang remained on the Nebraska seniority district until April 13, 1995, when they returned to the Wyoming district. Subsequently, on May 1, 1995, the Wyoming gang returned to the Nebraska district where, according to the uncontroverted statement of the Organization, they picked up on the signal project on which they had previously worked and continued to work thereon until May 11, 1995. On May 12, 1995, the Wyoming gang returned to their home seniority district. Nowhere in the case file does either party identify exactly what work was performed by the

Wyoming gang while working on the Nebraska seniority district. Carrier merely says that the May 1 to May 11 period constituted a new temporary transfer under Rule 34.

There is no claim in this dispute relative to or dealing with the initial transfer and use of the Wyoming gang from the unspecified date in February until April 13, 1995. The Organization apparently concedes that this initial transfer was a legitimate application of the provisions of Rule 34. The penalty claim as initiated and progressed to this Board centers around the second transfer of the Wyoming gang to the Nebraska district during the period May 1 to and including May 11, 1995.

During the on-property handling of this dispute, the Organization contended that the brief return of the Wyoming gang to their home seniority district was a "transparent attempt to circumvent the provisions of Rule 34." It argued that Rule 34 as currently structured came from the former "storm rule" and that the temporary transfer of not more than 60 days from one seniority district to another was intended to be applied not more than once "in a given year." Before the Board, for the very first time, the Organization insisted that a temporary transfer under Rule 34 could only be accomplished if the transferred employees were transferred "to a bulletined position or vacancy and could only be accomplished under circumstances which constituted unforeseen emergency conditions (which) dictated an additional need for signal labor to restore signal service."

Carrier's position was that Rule 34 gave them the unfettered right to make temporary transfers from one seniority district to another for periods of up to 60 days. In this case, Carrier argued that the return to the Wyoming district by the Wyoming gang broke the continuity of the allowable temporary transfer and that the subsequent return of the Wyoming gang to the Nebraska seniority district constituted a "new temporary transfer" rather than a continuation of the original (February-April) temporary transfer. It urged that the Organization's arguments relative to restrictions on the number of times a temporary transfer may be made is nothing more than hearsay in nature and such restrictions are not to be found in the Agreement. In any event, Carrier argued that the named Claimants suffered no actual loss of wages or work opportunity inasmuch as "Claimants worked as many or more hours as the Wyoming District employees during the claim period."

After a careful review of the applicable rules and after considering the respective positions of the parties, the Board is of the opinion that neither party has presented a

sustainable position in this case. Seniority rights are perhaps the single most sacred right which a railroad employee possesses. In this case, the Seniority Districts are set and defined by Agreement Rule 20. That Rule contains a binding cautionary statement which says that, "The territorial limits of seniority districts as above defined shall remain in effect until changed by agreement between the parties hereto."

It is the Board's opinion that Rule 34 is such an agreement between the parties which impacts on the defined seniority districts. It recognizes the possibility of temporary transfers from one district to another. It provides that the employee so temporarily transferred will retain home district rights and will be allowed expenses while off their home district. It gives the employee a veto right against transfers "except for temporary service." It further defines the term "temporary" and makes a provision to extend the temporary period if the parties agree. It does not contain any references to emergency situations nor does it contain any references to a specific number of times for its application. This Rule has been previously examined by Boards of Adjustment and has been found to be a viable, binding agreement (see Third Division Award 30877 and Award 92 of Public Law Board No. 4716). In addition, the fact that, in this case, there is no claim or dispute covering the original temporary transfer period is clear acknowledgment of acquiescence by the parties.

The troublesome portion of this dispute is found in the second transfer which occurred between May 1 and May 11, 1995. This Board has often ruled that we must interpret agreements within reasonable rules of construction. The Board has also held on numerous occasions that it should not make futile or absurd rulings in the interpretation of a rule or agreement. If possible when interpreting an agreement rule, the mutual intent of the parties should be ascertained and given effect. When one interpretation would or could lead to a harsh, absurd or nonsensical result while another interpretation would lead to a reasonable result, the latter should be used. This reasonable versus absurd measure comes into play in this dispute. Carrier insists that it can, without consequence, temporarily transfer employees across seniority district lines as long as the transfer period does not exceed 60 days at any one time. It insists that a return to the home district for any period of time breaks the continuity of the original temporary transfer and the subsequent transfer starts a brand new cycle. This in spite of the fact that the case file in this case contains uncontroverted testimony that the same gang worked on the same work project during both transfer periods. The Board does not believe that this was the intent of the parties when Rule 34 and the accompanying NOTE were agreed upon. Such an open-ended application could indeed

lead to an absurd and unreasonable application of the rule and would indeed circumvent the language of seniority district Rule 20. The parties have the wherewithal to effect legitimate temporary transfers of employees from one seniority district to another. In any event, there has been no showing in this case record that any of the Claimants suffered any measurable loss of wages or work opportunity.

AWARD

Claim dismissed.

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 25th day of March 1998.