

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34047
Docket No. SG-35424
00-3-99-3-314**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Burlington Northern Santa Fe Railroad Company (former
(Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Atchison, Topeka & Santa Fe Railway (ATSF):

Claim on behalf of W. Wiltz, C.M. Haddad, R.A. Himel, C.J. Herbert and D.J. Himel, for 240 hours straight time and 141.5 hours time and one-half each at their respective rates of pay and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly the UP-SP Implementing Agreement, Article II, Section 2A, when it failed to utilize the Claimants for work on their prior rights territory on the line east of Iowa Junction, from August 18, through September 30, 1997. Carrier’s File No. SIB 98-02-27AA. General Chairman’s File No. 9701121S. BRS File Case No. 10965-ATSF.”

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.

Pursuant to Decision No. 44 of Finance Docket No. 32760 of the Surface Transportation Board, the Burlington Northern Santa Fe Railroad (BNSF) purchased certain right-of-way from the Union Pacific Railroad of approximately 20 miles of former Southern Pacific track. To implement this transfer of track ownership and employees, the respective parties consummated an Agreement on September 16, 1996. It is this Implementing Agreement which is at the core of the instant dispute.

The Implementing Agreement contains clear and specific provisions which are of concern to the Board in the resolution of this dispute. For example, the stated purpose of the Agreement provides, in pertinent part, as follows:

- “1. The purpose of this agreement is to provide for expedited changes in services, facilities, operations, seniority districts and existing collective bargaining agreements to effectuate the transfers of track ownership as approved by the Surface Transportation Board in Decision No. 44 of Finance Docket No. 32760. The purpose is also to enable the company to provide effective competition to the combined UP-SP in these corridors, and to allow for integration of these operations with other BNSF operations.
2. This particular Agreement covers signal operations in the Iowa Junction - Avondale corridor only. Other Implementing Agreements may amend this Agreement or address operations in other corridors.”

The Agreement goes on to provide:

“Article 1 - Seniority Districts

Section 1.

The acquired territory, from Iowa Junction to Avondale, is added to the Texas Division seniority district. A new signal gang zone of operation no. 3 is created, running south and east of Somerville, Texas, and

encompassing the Iowa Junction - Avondale corridor. The Santa Fe Signalmen's Schedule will be applicable in the newly-acquired territory."

The Implementing Agreement further provides as follows:

"Article 2 - Selection of Forces

The operational plan for the Iowa Junction - Avondale segment contemplates the transfer of 12 signalmen from SP to BNSF: 2 Technicians and a 6-person maintenance crew (1 Foreman, 5 Signalmen) all headquartered at Lafayette and 4 Maintainers along the line with headquarters at Jennings, Lafayette, New Iberia and Schriever, Louisiana.

Section 1

The occupants of these positions on the effective date of the transfer of this line will be transferred to BNSF. Of the five (5) signalmen position on this line, the employees will be given the opportunity to transfer in seniority order.

Section 2

- A. SP employees who come into BNSF's employ will secure a seniority date of September 16, 1996 on the respective Santa Fe Texas Division rosters. However, they will also have prior rights to fill signal positions on the line east of Iowa Junction. . . ."

* * * * *

The Claimants were among the SP employees who were transferred to BNSF.

In this case, the Claimants were assigned to regularly bulletined positions in signal gang 15314 located at Lafayette, Louisiana. During the period of time covered by the claim, the Carrier was using a Maintenance of Way tie gang to perform track work on the Texas Division. The Signalmen who were assigned to follow the tie gang to perform the necessary signal work in connection with the track work were members of

signal gangs other than gang 15314. ALL Signalmen used in the tie gang work were from and part of the Texas Division Seniority District.

It is the Organization's position that when the tie gang entered into the territory acquired from the former Southern Pacific as referenced in the Implementing Agreement of September 16, 1996, the Claimants, as prior rights SP employees, should have been assigned to follow the tie gang to perform the necessary signal work rather than to use other BNSF Signalmen from other locations on the Texas Division Seniority District. They insist that all signal work on the newly-acquired territory accrued initially to the prior rights SP employees.

For its part, the Carrier insists that the Implementing Agreement was fully applied inasmuch as the former SP employees were regularly assigned to positions within the territory of their prior rights and were fully employed performing signal work in that territory. The Carrier argues that only Texas Division Seniority District Signalmen were used to perform the necessary signal work on the Texas Division and, therefore, no violation occurred.

From the Board's review of the case record, it is concluded that there has been no violation of the terms and provisions of either the Implementing Agreement or the basic Rules Agreement. The authors of the Implementing Agreement went to great lengths and used clear, specific wording in the construction of the Agreement language. The framers of the agreement retained prior rights to the former SP employees "... to fill signal positions on the line east of Iowa Junction." The Claimants filled such "positions."

The Organization argues that the Carrier could unilaterally abolish all of the Claimant's positions and thereafter have all of their work in the prior rights territory performed by others. This argument is pure speculation. The employees transferred from SP were incorporated into and became part of the Texas Division Seniority District. Likewise, the specifically defined territory in question was incorporated into and became part of the Texas Division. The use of Texas Division Seniority District employees on the Texas Division to perform necessary signalman work on the Texas Division does not create a situation in which the prior rights SP employees are denied work opportunities especially when those employees are assigned to and fully employed on Signalman positions in their prior rights territory.

The authors of the Implementing Agreement had the foresight to anticipate the “worst case” scenario advanced by the Organization in this case. They agreed as follows:

“Article 4 - General

Section 1.

- A. The parties have negotiated this Agreement mindful of the fact that their futures are linked and that we must work together to succeed over the long term. Therefore, the parties mutually pledge and commit themselves to act reasonably in the application of this agreement.”

The Board has no reason to believe that these professionals were other than honorable men who meant what they wrote and agreed to.

There is no proven violation of any Agreement provision found in this case. Therefore, the claim as presented is denied.

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 25th day of May, 2000.