

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34194
Docket No. MW-32419
00-3-95-3-301**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier established a headquarter point at Pokegama, Wisconsin on February 1, 1994, under Bulletin Nos. T5-94 and T6-94, which is not located on the Carrier's property without obtaining an agreement to do so from the General Chairman (Claim No. 9-94).**
- (2) As a consequence of the violation referred to in Part (1) above, the six (6) successful bidders, or any individual that is assigned or exercises their seniority to said positions, shall be allowed for each workday mileage allowance for thirteen and four-tenths (13.4) miles and thirty (30) minutes' pay at their time and one-half rates beginning February 1, 1994 through November 1, 1994.”**

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.

By letter dated April 21, 1993, the Carrier wrote the General Chairman as follows:

“Please be advised that the Carrier wishes to establish a headquarter point at the Pokegama Yard, using a former DW&P section facility.

As we have not established a pay rate for a Track Crew Foreman at this point, we suggest using the rate applicable at Steelton, now at \$14.66 per hour. If you concur with application of the Steelton rate, please so indicate by signing below and returning this letter to our office.”

The General Chairman did not sign the letter.

By bulletins dated January 24, 1994, the Carrier abolished positions at the Steelton, Minnesota, headquarter and subsequently established positions at Pokegama, Wisconsin. The facility at Pokegama (located 13.4 miles from Steelton) was not on the Carrier’s property, but was a building leased by the Carrier from the Duluth, Winnipeg and Pacific Railroad. The Pokegama facility contained storage, garage and locker areas as well as a lunchroom.

The dispute here is that the Organization contends that under Rule 21 the Carrier could not establish a headquarter point at Pokegama without the General Chairman’s consent, which was not given.

Rule 21 provides:

“Points for Beginning and Ending Work

Employees’ time will start and end at a regular designated assembling point for each class of employee, which will be the tool house, outfit car, or shop, or as otherwise agreed to between the Company and the General Chairman.”

The burden is on the Organization to demonstrate facts and rule support for its claim. Specifically, in this case the Organization must demonstrate that the Carrier was

obligated to obtain the General Chairman's consent before establishing the headquarter point at Pokegama. The Organization cannot meet that burden.

Under the facts of this case, nothing in Rule 21 requires the Carrier to obtain the Organization's consent before it established Pokegama as a headquarter point. Rule 21 requires that "[e]mployees' time will start and end at a regular designated assembling point for each class of employee, which will be the tool house, outfit car, or shop . . ." The facility at Pokegama contained storage, garage and locker areas as well as a lunchroom. That facility was a "tool house, outfit car, or shop" as contemplated by Rule 21. A reading of Rule 21 shows that the General Chairman's consent is required ("or as otherwise agreed to between the Company and the General Chairman") only when the Carrier desires to deviate from having a regular designated assembling point or from having a tool house, outfit car, or shop at that point. Because Pokegama fit the requirements of Rule 21 as a "regular designated assembling point . . . which will be the tool house, outfit car, or shop . . .," the General Chairman's consent for establishing Pokegama as a headquarter was not required.

The fact that Pokegama was a leased facility from the DW&P does not change the result. Again, there is nothing in the cited Rules which prohibits the Carrier from leasing a facility to use as its own for a headquarter. Here, we note that the Carrier has used Pokegama in the past.

Finally, the fact that the Carrier sought the General Chairman's consent in the April 21, 1993 letter does not amount to an admission by the Carrier that the Carrier was obligated to obtain the General Chairman's consent prior to establishing Pokegama as a headquarter point. A reading of that letter shows that the consent sought by the Carrier dealt with the Foreman's rate of pay, not the location of the headquarter point ("If you concur with application of the Steelton rate, please so indicate by signing below and returning this letter to our office"). The Foreman's rate of pay is not an issue in this matter.

Based on the above, the claim shall be denied.

AWARD

Claim denied.

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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 23rd day of August, 2000.