Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35457
Docket No. SG35147
01-3-98-3-902

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Port Authority Trans-Hudson Corporation (PATH)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Port Authority Trans-Hudson Corporation:

Claim on behalf of J. J. Baviello, K. L. Schelhorn, R. Cavanaugh, A. D. Goncalves, W. E. Gould, Jr. and T. Hopf for payment of four hours each at their time and one-half rates, account Carrier violated the current Signalmen's Agreement, particularly Article XIV paragraph L and Article V paragraph D, when it failed to call the Claimants to work as watchmen when they were available on the overtime rotation list to work these assignments. BRS File Case No. 10897-PATH."

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.

On the dates set forth in the claim, the Carrier assigned Signal Repair employees on regularly assigned positions on their regular tours of duty to act as Watchmen for FRA required switch inspections at locations other than the locations assigned to them. The claim was tiled on behalf of the Claimants who were subject to call for overtime on the dates in question.

The parties cite us to the following provisions of the Agreement:

"Article V

OVERTIME AND CALL IN

* * *

D. Employees shall be subject to be called in to work outside of, and not continuous with, the hours included in their regular tours of duty; or on days not included in their regular tours of duty. Employees required to work on a call-in basis shall be paid at the rate of time and one-half, with a minimum of four (4) hours pay at such rate. Such pay shall commence at the time when an employee arrives at the place where he is required to report to work, and shall terminate when said employee is released by PATH.

* * *

Article VII

VACANCIES

A. All vacancies (including those for only part of a basic work day), such as those caused by vacation, sick leave, death, retirement, excused absence, leave ofabsence and any other form of absence, or by the need for scheduling at a given time more than the usual amount of employment in any class of employment covered by this agreement, may be filled if necessary (as determined by PATE) by any regularly assigned employee (with priority being given to an employee in the same class of employment or job title as the work

to be performed) covered by this agreement (subject to Article XIV-I hereof) or by temporary employees (subject to Article XII hereof).

* * *

Article XIV

MISCELLANEOUS

A. Subject to observance of the express provisions of this agreement, PATH shall have the right to exercise all management prerogatives including the right to fix operating and personnel schedules, reduce force, determine tours of duty and work loads, arrange transfers, order new work assignments and issue any other directive intended to carry out its, public responsibility to operate PATH facilities safely, efficiently and economically.

* * *

I. Employees on regularly assigned tours of duty may be temporarily assigned to any location on the same tour in the event of an emergency."

This is a contract dispute. The burden is therefore on the Organization to demonstrate a violation of the Agreement. The Organization cannot meet that burden in this case.

First, because the Organization has the burden in this case, the first inquiry is whether clear contract language supports the Organization's position. It does not.

The Organization points to Article XIV(L) in support of its position ("[e]mployees on regularly assigned tours of duty may be temporarily assigned to any location on the same tour in the event of an emergency.") The foundation for the Organization's position is its argument that because Article XIV(L) addresses the kinds of assignments made in this case and only refers to emergencies, it, therefore, follows that because there was no emergency the assignments were improper and the Claimants should have been

called under Article V(D). However, that language in Article XIV(L) which serves as the foundation for the Organization's argument does not clearly state that the Carrier is prohibited from making the kinds of assignments it made in this case in m-emergency situations. Instead, to get to the Organization's conclusion, the Organization's reliance upon Article XIV(L) requires an interpretation of the language. According to the Organization, Article XIV(L) allows such an assignment during an emergency and, therefore, because there was no emergency in this case, it follows that such assignments cannot be made in m-emergency cases. While standing alone that construction may be appropriate, the point is that in order to get to where the Organization wants to go, there must be a construction of the language. Because the Organization's argument requires construction of the language, the language in Article XIV(L) is not clear.

Second, when language is not clear, the tools ofcontract construction can be used. As the Organization. points out, one of the Rules of Contract Construction is that to state on thing is to exclude another. See Third Division Award 18287 cited by the Organization ("It is also a principle of contract construction that expressed exceptions to general provisions of the contract must be strictly complied with and no other exceptions may be inferred.") Under this Rule of Contract Construction, the fact that Article XIV(L) refers to emergencies leads to a conclusion that such assignments cannot be made in non-emergency situations. This Rule of Contract Construction favors the Organization's position.

Third, however, other Rules of Contract Construction require that contracts should be read as a whole and that constructions of one clause which render language in other clauses meaningless should be avoided. Here, the Carrier points to Article XIV(A) which gives it ". . . the right to exercise all management prerogatives including the right to fix operating and personnel schedules, reduce force, determine tours of duty and work loads, arrange transfers, order new work assignments and issue any other directive intended to carry out its public responsibility to operate PATH facilities safely, efficiently and economically." The Carrier also points to Article VII(A) which gives it the right to fill "[a]ll vacancies (including those for only part of a basic work day), such as those caused by . . . the need for scheduling at a given time more than the usual amount of employment. . . [which] . . . may be filled if necessary (as determined by PATH) by any regularly assigned employee. . . covered by this agreement (subject to Article XIV-I hereof) or by temporary employees (subject to Article XII hereof)." Those general managerial prerogatives coupled with the bid assignments which provide that

Signal Repair employees can be given "other duties as assigned under the direction of the Signal Supervisor" support the Carrier's interpretation that it had the ability to move Signal Repair employees to serve as temporary watchmen for other Signal Repair employees while the FRA required inspections were being conducted. In terms of the rules of construction, if the Organization's construction is adopted concerning Article XIV(L), then this managerial prerogative language cited by the Carrier becomes meaningless - a result that the rules of construction seek to avoid. In order to give all the language meaning as required by these rules of contract construction, Article XIV(L) should be read narrowly - i.e., only as an explicit affirmation that in emergencies employees ". . . may be temporarily assigned to any location on the same tour." Therefore, application of these Rules of Contract Construction favors the Carrier's position.

Fourth, the Organization's reply to the Carrier's arguments that it had the ability to move Signal Repair employees as it did in this case under authority found in Articles XIV(A) and VII(A) causes the Organization to point to the opening provision of Article XIV(A) ("[s]ubject to observance of the express provisions of this agreement . . . "). The Organization's rebuttal goes back to whether the language in Article XIV(L) is clear to support its position. As discussed above, that language ("[e]mployees on regularly assigned tours of duty may be temporarily assigned to any location on the same tour in the event of an emergency") is not an "express provision . . . of this agreement" stating that these kinds of assignments cannot be made in m-emergency situations. All that language provides for is what can be done in emergency situations, which this was not. The opening provision in Article XIV(A) does not support the Organization's position.

Fifth, another tool of Contract Construction is to look to how the parties have interpreted the disputed language in the past. Here, the record shows that in somewhat comparable circumstances in the past, the Carrier has made similar assignments which, while initially protested by the Organization, were not progressed all the way through the grievance process. That fact weighs towards a conclusion consistent with the Carrier's position in this case.

In sum, the Organization has not shown that clear contract language supports its position; the record shows that while there is language that supports the Organization's interpretation, there is also language that supports the Carrier's interpretation; to adopt the Organization's interpretation could result in rendering other language meaningless,

which the Rules of Construction seek to avoid; and in the past the Carrier has made similar assignments as it did in this case which, while protested, were not carried through the full grievance process. The bottom line in this case is that both parties' positions are plausible. But, again, these cases are decided on burdens and the burden in this contract dispute is on the Organization. If the record leads to a conclusion in a contract dispute that both parties' positions are plausible, the final conclusion must be that the Organization has not carried its burden. That is this case. The claim shall be 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 22nd day of May, 2001.