

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35636
Docket No. SG-35336
01-3-99-3-237**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of behalf of the General Committee of the Brotherhood of Railroad Signalmen on the consolidated Rail Corporation (Conrail):

Claim on behalf of J. Farrell, R.J. Ford, J.T. Hale, D.J. Neumann, J.T. Rucker and F.D. Smith, for payment of 12 hours each at their respective double-time rates, and for Claimants J.T. Rucker and F.D. Smith, for payment of hours each at their respective time and one-half rates, account Carrier violated the current Signalmen’s Agreement, particularly Article IX, Part A, Section 5, when it required signal gang employees from Seniority District 16 to work more than 50 miles away from their seniority district on Seniority District 19 on August 8, 15, and 16, 1997 and denied the Claimants the opportunity to perform this work. Carrier’s File No. SG-998, General Chairman’s File No. RM-3085-64-1297, BRS File Case No. 10932-CR.”

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.

At issue in this case is whether the Carrier violated Article IX, Section 5 of the pertinent Agreement by authorizing a construction gang from Seniority District 16 to work on Seniority District 19. The Rule reads in relevant part as follows:

“ . . . Where work is to be performed more than fifty(50) miles within another prior right seniority district, the headquarters of the construction position will be advertised within that seniority district.”

The dispute centers around how the “50 miles” referred to in Article IX, Section 5 should be calculated. In the Organization’s view, the 50 miles should be based on railroad miles, while the Carrier argued that it should be based on geographic miles. No evidence in the form of practice or bargaining history was offered by either party to support their respective interpretations.

The Organization, as the moving party, bears the burden of proving the elements of its claim. Based on our review of the record as a whole, the Board is unable to conclude that the Organization met its evidentiary burden. There is simply no probative evidence in the record from which we can conclude how the “50 miles” in Article IX, Section 5 should be calculated. As a result, we have no alternative but to deny the claim.

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 28th day of August, 2001.