

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40681
Docket No. MW-40144
10-3-NRAB-00003-070389
(07-3-389)

The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1)The Agreement was violated when, by letter dated January 17, 2005, the Carrier changed Mr. G. Dosch’s ‘Home Station’ from Minot, North Dakota, to Pierce, North Dakota, instead of Dickinson, North Dakota [System File T-D-2854-W/11-05-0096 BNR].

(2)As a consequence of the violation referred to in Part (1) above, Claimant G. Dosch shall now ‘. . . be made whole for any and all losses, beginning January 17, 2005 and continuing until the Carrier corrects the designation of Claimant’s Home Station.’”

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.

An employee's home station is defined by the Districts Consolidation - Related Agreements of June 10, 1999, specifically, Rule 36 C (2):

“2. For the purpose of applying Rule 36 C of this Agreement to those employees who are not currently assigned a home station, a ‘Home Station’ is defined as the station, town, or city listed in the current Carrier Timetable located on the seniority district nearest his residence. The Carrier will assign a ‘Home Station’ on December 1 of each calendar year based on the employee’s residence on that date. The employee’s ‘Home Station’ may only be changed on December 1 of each calendar year unless otherwise agreed to between the parties to this Agreement.

. . . on each December 1, only those employees whose ‘Home Station’ is changed from the previous year will require . . . notification [to the General Chairman]. This information is to be provided to the employees and the General Chairman by each December 31. It is the responsibility of the employee to keep the Carrier advised of address changes in the usual manner.”

From 1999 into 2004 the Claimant’s residence and home station was Minot, North Dakota. Sometime during 2004 the Claimant changed his residence from Minot to Dickinson, North Dakota. This change in residence caused the Carrier to re-evaluate the Claimant’s home station designation. Although the Claimant anticipated a change in home station from Minot to Dickinson, the Carrier changed it from Minot to Pierce, North Dakota, which is 106 miles from Dickinson.

The claim was timely processed and properly presented by the Organization and Carrier at all stages of appeal including the filing with the Board.

The Organization states that the designation of a home station protects an employee’s prior-rights seniority following the consolidation of seniority districts in 1999. The Claimant has prior-rights seniority as a Group 2 Machine Operator in

Roadway Work Equipment Sub-Department District No. 4 which encompasses former Seniority District Nos. 15 and 17 (consolidated into current Seniority District Nos. 200 and 300).

The Claimant's prior-rights seniority District Nos. 4 and 15 (consolidated into District No. 200) include Minot and Dickinson. The Claimant's seniority grants him the right to positions and work on the territory encompassed by District No. 4 or the territory comprised of District Nos. 15 and 17. The Carrier acknowledges the Claimant's seniority because it does not dispute the fact that it has recalled the Claimant to service in District No. 200 during the past two years.

Because the Claimant possesses seniority covering positions on the territory, the Agreement mandates that his home station be the station on the Carrier's trackage closest to his residence - Dickinson. When a "home station" is assigned to an employee, it is designated, given the definition in the Agreement, as a location "on the line of the road" which is "on the seniority district nearest his residence" (Dickinson). Rule 36 C (2) does not require the Claimant to have seniority at the location of his home station; the Rule and Agreement allow an employee to live anywhere. Plus the Carrier's improper home station designation makes the Claimant ineligible for away-from-home expenses should the Claimant choose to use his prior-rights seniority.

The Carrier relies on the majority of the Claimant's seniority in District No. 15 for designating Pierce as his home station. Rule 36 C (2), however, plainly identifies the "seniority district nearest [the Claimant's] residence" and states nothing about defining home station based on the seniority district where the employee has the majority of his seniority dates.

Also, the Carrier did not notify the Claimant and General Chairman of the change in the Claimant's home station prior to December 31. The Carrier notified the Organization on January 17, 2005, that it was changing the Claimant's home station to Stanton. The Carrier cannot unilaterally change the Claimant's home station after December 31 without the Organization's concurrence.

According to the Carrier, an employee's home station is required to be on the employee's seniority district. In this regard, the Organization's arguments that the

Claimant is not required to have seniority at the location of his home station and the Agreement allows an employee to live anywhere, do not comport with Appendix EE:

“Q. Must the Home Station referred to in Rule 36 C (2) be located on the employee’s seniority district?”

A. Yes. Except as otherwise provided in Rule 36, it is not intended to change the current application of rules governing assignment of Home Stations.”

The majority of the Claimant’s seniority (Laborer, Group 5 Machine Operator, Track Maintainer, Grinder Operator, Welder Helper, Group 3/4 Machine Operator) was on prior-rights seniority District No. 15 (now encompassed in consolidated seniority District No. 200); only one of the Claimant’s seniority dates was in District No. 4 (Group 2 Machine Operator). Thus the majority of the Claimant’s seniority is in consolidated District No. 200. After the Claimant’s change of residence in 2004, the closest prior-rights seniority District No. 15/consolidated District No. 200 station in the current Carrier Timetable to the Claimant’s residence was Pierce.

The Claimant has much less seniority in District No. 4 (Group 2 Machine Operator); that seniority provides him with preference to positions on District No. 4 and nothing more. The Carrier’s practice to assign the home station to the location with the majority of the Claimant’s seniority is reasonable and not arbitrary. The parties did not intend to allow an employee to hold one seniority date in a foreign district (No. 4) and use it to trump all other seniority dates (District No. 15).

Public Law Board No. 4768, Award 50, states that in the absence of a specific Rule to the contrary, the Carrier can exercise its discretion and Third Division Award 35960 states that absent express language in the Agreement, the Carrier is free to exercise its management rights. Given this arbitral precedent, the Carrier selected a home station that encompasses the majority of the Claimant’s seniority rights and this satisfies the Agreement. The Carrier is not required to designate the Claimant’s home station wherever the Claimant wishes to have it designated.

If the Claimant had a unilateral right to select between seniority locations (District No. 200 or District No. 4), the Agreement would specify a procedure for the

employee to exercise that option. Without a specific procedure, there would be claims by employees selecting as home station the minority or foreign district where they have the least seniority and other employees would select the location with the majority of their seniority. The parties did not provide this option for the employees; it would be a Catch-22 situation for the Carrier.

The Carrier states that it issued timely notice to the Claimant and the Organization of the change in home station. The Organization did not submit the letter (January 17, 2005) it relies upon as evidence of untimely notice; the Organization has not met its burden of proof on this disputed item.

Having reviewed the record, the Board finds there is no dispute that the Claimant possesses seniority on District No. 200 that includes the Claimant's prior-rights seniority on District Nos. 4 and 15. Given the Claimant's seniority districts and the protection of prior-rights seniority intended by the Districts Consolidation - Related Agreements of June 10, 1999, the Board determines that the Claimant's home station is Dickinson because it is a "station, town or city listed in the current Carrier Timetable located on the seniority district nearest [the Claimant's] residence." Pierce, 106 miles from Dickinson, is not the seniority district nearest the Claimant's residence.

The Carrier observes a Catch-22 situation should the employee be allowed to select the seniority district to use for home station designation and, unless there is a specific provision authorizing the employee to choose, the Carrier exercises its management right to select the seniority district.

Rule 36 C (2) is not ambiguous in application. When, as here, there is more than one seniority district and prior-rights protections in play, the Carrier will select the "seniority district nearest [the employee's] residence." Rule 36 C (2) does not differentiate between or among seniority districts based on where an employee has the majority of seniority and there is no option for an employee to choose among or between seniority districts for purposes of designating a home station. Rather, Rule 36 C (2) requires the Carrier to choose and use the seniority district nearest the employee's residence. The interpretation and application of Rule 36 C (2) consistent with this Award, ensures that an employee's prior-rights seniority is maintained and operative.

The Organization did not submit the letter (January 17, 2005) which it states is an untimely notice of the change in the Claimant's home station. The Carrier states it provided timely notice. This disputed fact, essential to determining a violation of timeliness under Rule 36, cannot be reconciled based on this record because the Organization did not tender the letter.

Given the foregoing findings, the claim is sustained to the extent that the home station for the Claimant is Dickinson, but other requested remedies pertaining to expenses or damages is denied because there was no evidence supporting those items.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 2010.