

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22374  
Docket Number MW-22096

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Burlington Northern Inc.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated February 9, 10, 11 and 12, 1976 when Bridge and Building forces from Seniority District No. 14 were used to perform work on Seniority District No. 13 [System File T-W-115C/MW-84(1) 4/30/76]

(2) B&B Foreman H. Solem, First Class Carpenters J. Kuntz, R. Hamel, O. Hagen and P. V. Mutnanski, Second Class Carpenter F. Hall and Truck Drivers D. Lang, R. O. Brokken and N. R. Fossum each be allowed 20.4 hours of pay at their respective straight-time rates and 8 hours of pay at their respective time and one-half rates because of the aforesaid violation."

OPINION OF BOARD: On claim dates, Fargo Seniority District 14 Bridge and Building Gang performed bridge repair work in Seniority District 13. Claimants assert that (with exceptions not here applicable) seniority is restricted by districts - as specified in Rule 6 - and thus, Carrier's action violated a number of agreement provisions.

Carrier has asserted that there was an "emergency" situation. But, we note that the damage occurred on a Saturday, and repair work did not commence until Monday. In any event, our review of this record fails to suggest that Carrier may properly defend its actions based upon an "emergency" concept.

In addition, Carrier asserts that the District 14 employees were temporarily transferred to perform the repair work; that the District 13 employees were employed on other projects; seniority does not establish rights of exclusivity to work; and that, regardless, Claimants were fully employed during the pertinent time.

Rule 11 specifies:

"A. An employee may be temporarily transferred by the direction of the Company for a period not to exceed six (6) months, from one seniority district or division to another, and he shall retain his seniority on the district or division from which transferred. Such employee shall have the right to work temporarily in his respective rank on the district or division to which transferred, if there are no qualified available employees on the district or division. The six (6) month period may be extended by agreement between the Company and the General Chairman. When released from such service the employee shall return to his former position."

We have noted the Carrier's "seniority" argument at Page 6, et seq. of its Submission, but we do not feel that said contention controls this dispute.

Award No. 20891 considered a similar dispute between these parties in which the Carrier assigned an employee from one seniority district to perform work in another district. (The Board held that Carrier, by that action "...violated the right of an employee holding seniority in that district to perform the work.") Carrier stresses that the Referee, in Award 20891, did not consider Rule 11. But, certainly Award 21678 - also between these parties - considered Rule 11 at length. In that sustaining Award, the Board found a "temporary" use, and assumed arguendo a "transfer." But, reasoned the Board, the Carrier controlled the availability of the admittedly "qualified" employees. No purpose is served by incorporating a lengthy exploration of the Rule 11 concept in this Award. Suffice it to say that even presuming that the parties meant for this type of a circumstance to generate a "temporary transfer" (rather than a more clearly defined personnel shortage) the matter has been disposed of by Award 21678. Absent a finding that said Award is palpably erroneous, we are compelled to follow it.

Our Award 19899 and subsequent Awards have fully explored the damage question. Award 22194 is not persuasive to a contrary conclusion.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1979.