

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25559
Docket Number MW-25375

Frances Penn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corp.

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

"(1) The Agreement was violated when Track Inspector J. P. White was not used to perform overtime service on his assigned territory (M.P. 29.3 to M.P. 38) on February 13, 1982, (System Docket 419).

(2) Track Inspector J. P. White shall be allowed six (6) hours of pay at his time and one-half rate because of the violation referred to in Part (1) hereof."

OPINION OF BOARD: This Claim requests six hours of compensation at time and a half to the Claimant because another employee was used by the Carrier to remove speed restriction signs between Mile Posts 30 and 38. The Organization maintains that under Rule 55 the Carrier should have called the Claimant at home on his rest day. Rule 55(a) states:

"PREFERENCE FOR OVERTIME WORK (a) Employees residing at or near their headquarters will, if qualified and available, be given preference for overtime work, including calls and work ordinarily and customarily performed by them, in order of their seniority."

The Organization contends that the area from which the sign posts were removed was on the Claimant's assigned territory and that this was work ordinarily performed by him. The Carrier contends that no violation occurred. According to the Carrier, another employee was on the property on overtime duty and to call in the Claimant would have delayed trains. The Carrier maintains that the work in question took a maximum of one (1) hour. The Carrier urges that this Claim be dismissed because it contends that the Organization failed to identify a rule that had allegedly been violated when the dispute was handled on the property.

The Board rejects the contention by the Carrier that the Organization failed to cite a rule. Although the original Claim did not state a rule, the parties themselves understood that the issue was whether Rule 55 had been violated. On May 18, 1982, the Carrier stated in a letter to the Organization that it had complied with Rule 55; a letter from the Organization on July 1, 1982, also refers to Rule 55. The Carrier cannot assert the failure to cite a rule at a later time when its actions show that it was well aware of the rule underlying the Claim. Therefore, the Claim will be considered on its merits.

The Board finds that the Organization has failed to present any substantial evidence to prove that a violation of the Agreement occurred. The Organization did not refute the Carrier's statement that the work took a maximum of one (1) hour. Even if a violation had been found to have occurred it would have constituted a "de minimis" violation and the Claim would have been denied on that basis. (See Second Division Award No. 8778.) However, the Board finds that the record does not establish that the Carrier was obligated under the Agreement to call the Claimant in for overtime or that the Claimant had an exclusive right to any work between Mile Posts 30 and 38 because that is his regularly assigned territory. As Third Division Award No. 16191 states: "Carrier has the right to rearrange existing work assignments to meet its operational necessities unless prohibited by the Agreement between the parties." The Board finds no such prohibition in this situation.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and 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

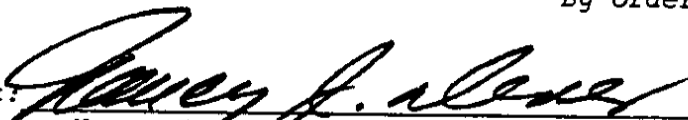
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 26th day of July 1985.

