

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28650  
Docket No. SG-27229  
90-3-86-3-306

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

On behalf of N. C. Speidel and J. B. Blickley for 32 hours at their respective pro rata rate of pay, account of Carrier violated APPENDIX 'K' of the current Agreement when it permitted or allowed Seniority Roster No. 7 employees to work on Seniority Roster No. 8 district, on March 14, 20, 21 and 22, 1985." Carrier File: SD-2216.

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

In March 1985, Carrier directed repairman on Seniority District No. 7 to correct several crossing protections in Seniority District No. 8. As a result of Carrier's actions, the Organization filed a Claim, alleging that the work in dispute should have been performed by District No. 7 Signalmen. Carrier denied the Claim. The Organization appealed the Claim in the usual manner on the property. It is now before this Board for adjudication.

The Organization argues that Carrier violated the basic structure of the seniority system by the assignment of employees from Seniority District No. 7 to perform work on Seniority District No. 8. It asserts that Carrier is not entitled to unilaterally assign employees where they would cross seniority

districts without mutual agreement. The Organization points out that Carrier's argument that the situation was considered an emergency was never raised on the property. In the Organization's view, Carrier's actions constituted a violation of the Agreement whereby Claimants are entitled to be compensated for this loss of work opportunity. It asks that the Claim be sustained in its entirety.

Carrier, on the other hand, asserts that the Claim was not progressed to this Board under the requirements of Section 3, First (i) of the Railway Labor Act. It maintains that the Claim was not presented to the proper official at the first level. Rule 4-K-1(a) requires that claims be submitted to the appropriate C&S Supervisor. The Claim should have been submitted to the New Jersey Division Supervisor but was improperly submitted to the Harrisburg Division Supervisor. Thus, Carrier concludes that the Claim was improperly filed.

On the merits, Carrier argues that it acted properly when it assigned Seniority District No. 8 employees to perform work in Seniority District No. 7. It asserts that the Organization's reference to Appendix K does not prohibit the use of employees from one seniority district to perform work in another seniority district. In this particular case, Carrier argues, hazardous conditions existed that needed to be corrected. Since Carrier attempted to fill the positions that would normally perform the work without any bids from qualified employees, it argues that it appropriately assigned employees in Seniority District No. 7 to perform the work. Thus, Carrier insists that it acted appropriately under the particular circumstances.

Additionally, Carrier notes that all of the Claimants were fully employed during the period the disputed work was performed. Since no Claimant suffered any monetary loss thereby, Carrier maintains that even if an Agreement violation is found, no monetary relief should be awarded.

After a careful review of the record evidence, we are convinced that the Claim must be denied. Under the particular circumstances of this case, hazardous conditions existed whereby it was determined that road crossings without protection needed to be repaired expeditiously. We do not consider Carrier's actions in this case to be violative of the Agreement. In this instant dispute, while an emergency, per se, did not exist, hazardous conditions existed that had to be corrected. A clear danger to the public is apparent should the crossing protections remain uncorrected for any substantial period of time. For this reason, it was reasonable for Carrier to assign employees in Seniority District No. 8 to correct the road crossings. As was noted in Award 24271:

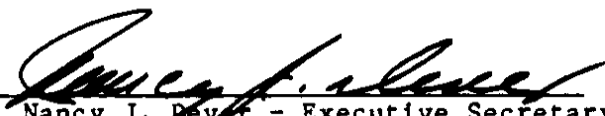
"The failure of Carrier to formally declare the existence of an emergency does not change our findings. It is not dispositive. A safety hazard clearly existed whether or not an emergency was declared. Carrier's obligations to correct that hazard were just as great even in the absence of such a declaration. Stated simply, extreme conditions required abnormal remedial measures."

Additionally, we further note that Seniority District No. 8 employees are also covered under the applicable Agreement. As such, Carrier did not go outside the coverage of the Agreement when employees from Seniority District No. 7 were assigned to perform the work in dispute on March 14, 20, 21, and 22, 1985. For all of the foregoing reasons, the Claim must be denied in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1991.