

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM: "Claim on behalf the General Committee of the
Brotherhood of Railroad Signalmen on the Southern
Pacific Transportation Company:

On behalf of the members of the Oakland and Niles Signal Gangs, for payment of eight (8) hours each, for each day worked by the Santa Clara Gang No. 2, on the Western Seniority District, beginning November 11, 1988 and continuing until this violation is stopped, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 37, when it allowed or permitted employees not having seniority on the Western District to perform work on that Seniority District." Carrier file SIG-37-56. BRS file Case No. 7898-SPTC-WL.

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.

On November 8, 1988, the Carrier wrote to the Organization's General Chairman informing him as follows:

"This is to advise that, effective November 8, 1988, we have moved Signal Gang No. 2, Santa Clara, California, Western Seniority District, Coast Division, to Fruitvale Tower, Oakland, California, for a period of approximately thirty (30) working days, due to a shortage of available signalmen on the

Eastern Seniority District, Sacramento Western Division."

The Organization filed the instant Claim on November 22, 1988, asserting the Carrier was not authorized to move the gang off its seniority district. The Claim was filed on a continuing basis until the gang returned to the Coast Division. According to the record, this occurred on December 20, 1988. During the time covered by the Claim, Signal Gang No. 2 worked with the Claimants (the Oakland and Niles Signal Gangs) at Fruitvale Tower. The Carrier explained the scope of the job and the time frame within which it had to be completed necessitated the movement of the gang.

The Organization bases its Claim upon Rule 37 - Seniority Restrictions, which reads as follows:

"Seniority rights of employees shall be restricted to the territory over which one superintendent has jurisdiction, except as may be provided by agreement pursuant to Rule 38."

The Carrier does not deny it moved Signal Gang No. 2 off its territory. In its Submission before this Board, the Carrier argues the move was made under the provisions of Rule 63 - Temporary Transfers, which reads as follows:

"Except for temporary service, employees shall not be transferred to another division unless they so desire. Employees so transferred by direction of the Management shall receive actual expenses while away from their regular home stations. In temporarily transferring employees to other divisions, the junior employee shall be the first to be transferred. Employees temporarily transferred to another division shall be returned to their home division as soon as the condition necessitating such transfer ceases to exist."

The Organization has objected to the Carrier's reference to this Rule asserting it was never cited during the handling of this dispute on the property. Although the Carrier states this defense was implied in its denials of the Claim, we find the Organization's objection well taken. The Carrier neither cited the Rule by number nor used language similar to that contained in the Rule. Furthermore, the Organization correctly points out the Rule provides for the movement of employees on a seniority basis, which was evidently not the case herein. We conclude, therefore, the Carrier did not rely upon this Rule during its handling of the dispute, and we will not consider it in our decision.

The Carrier asserts the Claim is improperly before the Board as it lacks specificity as to the dates during which the alleged violations may have occurred, what duties were performed, and how much time was involved. We do not agree such specificity is required in this case. The Carrier first advised the Organization of its intent to move the gang off its seniority district. It was in response to this notice and the Carrier's subsequent action that the Claim was filed. At the time the initial Claim was made, the gang was still engaged in its work on the Sacramento Western Division. Accordingly, the Claim was filed on a continuing basis until they were returned. Thus, the Organization was not required to specify the dates and times of the violations. Additionally, it was the act of working on a different seniority district which the Organization was claiming to be a violation of the Rule. It did not matter to the Claim what duties were being performed, the location was the issue.

From our review of the Rule and the circumstances involved in this case, we conclude the Carrier improperly moved the gang off its seniority district in violation of the Agreement. Rule 37 limits the seniority rights of employees to a single territory. The Carrier and the Organization did not enter into any Agreement which would authorize the gang to be moved elsewhere. Accordingly, the work performed by the Santa Clara Gang at the Fruitvale Tower was work which they had no right to perform. It was reserved to employees of the Sacramento Western Division.

Turning to the remedy, we do not agree the Claimants are entitled to the full relief claimed. Although there are eight (8) named Claimants (five from the Oakland Signal Gang and three from the Niles Signal Gang), the record discloses the workforce from the Santa Clara Gang varied from day to day between four and eight employees. The total damages on each day should not exceed the time spent by Santa Clara Gang members on that day. For this reason, we direct the Carrier to compensate the Claimants for the total man-hours worked by the Santa Clara Gang at the Fruitvale Tower between November 11 and December 20, 1988, to be divided equally among them. According to information provided by the Organization in its letter of February 18, 1990, which has not been refuted, this is a total of 1,216 hours, or 152 hours per Claimant.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

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