

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29696
Docket No. SG-29732
93-3-91-3-88

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen, on the Consolidated Rail Corporation:

Claim on behalf of W.F. Robertson, for payment of 4 hours pay, at his punitive rate of pay, account of Carrier violated the current Signalmen's Agreement, as amended, particularly, Rule 3-A-2 (a) and APPENDIX "K", when it allowed or permitted an employee from Seniority District No. 13 to perform work on Seniority District No. 14, at MP 252.2, on August 1, 1989." Carrier file SG-215. BRS Case No. 8293-CR."

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 employe 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 Tuesday, August 1, 1989, the Richland Water Company was digging under Carrier property at Mile Post 252.2 to repair a water line. The digging progressed under a pole which could have toppled unless it was supported. The pole was located in Seniority District 14. Carrier directed a Seniority District 13 employee working 16.5 miles away, to proceed to the digging site to hold the pole with a boon truck until the project was completed. Claimant, a District 14 employee, working 23 miles away, contends that he should have been given the work. Carrier argues that the use of the District 13 employee on District 14 was excusable because it was an emergency requiring immediate action.

Carrier has defended its use of a District 13 employee on District 14 on the grounds that it was emergency work. Carrier is obligated, when relying on an emergency excuse, to demonstrate that an emergency actually existed. This record fails in this respect. The facts present suggest that the situation was not as grave as Carrier indicates. The digging activity obviously was suspended until the pole was supported. There is no showing that the employee entitled to perform the work could not have arrived at the site in relatively the same amount of time as the employee used. The difference between the work locations of the employee used and the employee entitled to be used was relatively insignificant, 16.5 miles in one case, 23 miles in the other. Additionally, there is no showing that a boom truck could not have been made available to Claimant.

The Claim has merit, it will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever, Secretary To The Board

Dated at Chicago, Illinois, this 16th day of July 1993.