Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32219
Docket No. MW-31286
97-3-93-3-297

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned junior employes C. Kulesa, M. Davis and J. Hardison to perform overtime service for the C&S Department, setting signals in Zone 4 on August 30, 1991, instead of assigning the senior employes J. Crandley, W. Hayes and E. Bailey to perform said work (System File NEC-BMWE-SD-3056 AMT).

(2) The Agreement was violated when the Carrier assigned Wilmington employes to perform work within the Philadelphia work zone boundaries on January 28, 29, 30 and February 7, 1992 instead of assigning Philadelphia Division employes J. Gricol, W. Fossett, J. Glessner and L. Troy to perform said work (System File NEC-BMWE-SD-3122).

(3) As a consequence of the violation referred to in Part (1) above, Claimants J. Crandley, W. Hayes and E. Bailey shall each be allowed ten (10) hours' pay at their respective time and one-half rates.

(4) As a consequence of the violation referred to in Part (2) above, Claimants J. Gricol, W. Fossett, J. Glessner and L. Troy shall each be allowed thirty-two (32) hours' pay at their respective straight time rates."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

This case involves multiple claims which were consolidated for hearing before the Board. All claims are similar in that they involve cross-zone service. For convenience of analysis, the claims may be divided into two groups.

The first group of claims, filed on October 19, 1991 by Claimant J. Crandley on behalf of himself and two other employees, involves an overtime assignment and alleges a violation of Rule 55 regarding preference for overtime. Claimants J. Crandley, W. Hayes and E. Bailey all had established and held seniority within the Carrier's Electric Traction Department at the time of the events in question. The Claimants were headquartered within Work Zone 4 on the Philadelphia Division, assigned to the territory encompassing Mile Post 21.0 (to the West), Mile Post 6.4 (to the South) and Mile Post 76.0 (to the North).

On August 30, 1991 the Carrier assigned Track Department Forces C. Kulesa, M. Davis and J. Hardison from Work Zone 4A, the Atlantic City line, to perform the work of setting signals for the C&S Department at the Shore Interlocking in Work Zone 4. The Organization contends that employees Kulesa, Davis and Hardison each expended ten hours at the time and one-half rate in connection with the setting of signals for the C&S employees. The Organization argues that this assignment violated Rule 55, and that Claimants Crandley, Hayes and Bailey each are entitled to ten hours at the punitive rate.

By letter dated December 11, 1991 the Acting Division Engineer denied the claim on the basis that the employees utilized to perform the disputed work were assigned to "track travel" the equipment from the Atlantic City Line, their home subdivision, to Shore Interlocking, the site of the work project, because there was no assurance that the equipment would make it to the job site. The Carrier denied that it was contractually obligated to relieve the subject employees from an assignment that commenced in their own work zone simply because the work to be performed involved overtime in another work zone. The Carrier also took exception to the amount of time claimed, asserting that the amount of work time at Shore Interlocking was far less than the ten hours claimed.

The Carrier's rationale for the assignment was that a multicrane was required to support a C&S project in Zone 4 near Philadelphia. Because the closest multicrane was located in Zone 4A, the Carrier gave preference for the overtime assignment to the senior qualified employees in Work Zone 4A where the equipment was located. The employees from Work Zone 4A moved the equipment to the work site and provided the necessary support for the project.

The second group of claims involves work performed on straight time and alleges a violation of Rules 14 and 15, as well as the October 1, 1987 Electric Traction Work Zone Agreement. Claimants W. G. Fossett, J. Glessner, J. Gricol and L. Troy submitted letters dated March 13, 1992 requesting 32 hours at the straight time rate. Their claims asserted that the Carrier violated the Agreement when it assigned Wilmington employees to perform work within the Philadelphia work zone on January 28, 29, 30 and February 7, 1992.

Claimants W. G. Fossett, J. Glessner, J. Gricol and L. Troy all had established and held seniority within the Carrier's Electric Traction Department at the time the dispute arose. They were headquartered at the Penn Coach Yard, Philadelphia, Pennsylvania, and assigned to the territory that encompassed the main line from Holmes at Mile Post 76, to Greentree at Mile Post 21.3, to Darby Creek at Mile Post 6.3, including the Electrified Branch Line within the area.

The Acting Division Engineer denied the claims of Messrs. Fossett, Glessner, Gricol and Troy on the grounds that Rule 15 does not prohibit the Carrier from using employees in cross-zone service. He asserted that the Electric Traction Department had historically and consistently used employees in cross-zone service, particularly in the area cited in the claims.

The Carrier's rationale for the assignment was that it had an Electric Traction Line gang headquartered in Wilmington with a tour of duty from 11:00 P.M. to 7:00 A.M., but no gang was headquartered in Philadelphia with those hours. The Carrier therefore used the gang from Wilmington to perform service near Philadelphia, during their regular tour, while traffic was lightest. No Rule or Agreement prohibits such assignment of employees to work in multiple work zones.

The threshold issue to be decided in each of the above claims is whether the Carrier violated the cited Rules and/or Agreement by assigning employees to cross-zone service.

In both groups of claims the Organization asserts that the Rules prohibit cross-zone assignments. The first group of claims is controlled by the analysis applied in Public Law Board No. 3932, Award 1, in which the Organization also cited Rule 55 and Rule 14, covering "working zones", to support its position that the Carrier is obligated to assign work on the basis of those zones. The facts in that case are very similar to those of the instant case. Public Law Board No. 3932 denied the claim and made the following findings:

> "Initially, we find that Rule 14 nowhere prohibits Carrier from using employees in 'cross-zone' service. Rule 14 merely designates the different zones and the advertising of positions within those zones. The Organization has failed to demonstrate any language prohibiting Carrier from utilizing employees in 'cross-zone' service. Further, we find that Rule 55 is equally unsupportive of the Organization's position. That Rule would only be applicable if it were established that Claimant was entitled to perform overtime work on the dates in question. Since we find no such entitlement under other provisions of the Agreement, Rule 55 lacks applicability to the present dispute. Contrary to the Organization's position, we find that Carrier has provided substantial evidence concerning past practice to indicate that 'cross-zone' service has been utilized previously in several areas."

With respect to the overtime claim made under Rule 55 in the instant case, the work with the multicrane was part of a continuous job assignment that began in Work Zone 4A with the movement of the equipment, and was concluded in Work Zone 4. The determination of overtime preference was made based upon the zone where the

employees reported. The Agreement does not require the Carrier to relieve employees from an assignment, under the circumstances of this case, prior to completion of the assignment.

The Electric Traction Work Zone Agreement is very similar in design and purpose to Rule 14, and the Organization adduced no convincing proof that it should not be subjected to the same analysis applied in Public Law Board No. 3932, Award 1.

Based upon careful consideration of the record and the Submissions of the parties, the Board finds that neither the cited Rules nor the Agreement were violated, and the claim therefore must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 17th day of September 1997.