

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32943
Docket No. MW-32183
98-3-94-3-558**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation (AMTRAK-
(Northeast Corridor)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier advertised a Substation Gang D-232 foreman's position headquartered at Penn Coach Yard, Philadelphia, Pennsylvania to extend the foreman's territory to include Wilmington, Delaware work zone (System File NEC-BMWE-SD-3315 AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall rescind or amend Advertisement No. 121-PETC-1093 to comply with the working zones established by the Agreement.”**

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.

The issue in this case is whether Carrier violated Rule 15 and the Working Zone Agreement by advertising a new Foreman substation position headquartered at Penn Coach Yard in Philadelphia, Pennsylvania, with an assigned work territory extending over two work zones, Philadelphia and Wilmington, Delaware.

Rule 15 establishes two separate seniority districts for Electric Traction Equipment, and provides that:

"Working zones within the seniority districts may be established, by Agreement, in writing, between the General Chairman and Chief Engineer."

An Electric Traction Work Zone Agreement was made between the Organization and Carrier, updated in October 1987, which sets forth, in pertinent part, different work zone limits for gang Foreman substations headquartered at Philadelphia and Wilmington, Delaware. There is no dispute that Carrier's bulletin in issue was the result of an abolishment of the prior Philadelphia Foreman position and the establishment of a new position responsible for the additional supervision of three new Wilmington zone substation positions. The bulletin listed a territory encompassing two different work zones and qualification requirements of passing a satisfactory exam.

The Organization argues that Rule 15 clearly states that the only change that can be made to work zones established by the parties is by written agreement between the General Chairman and Chief Engineer. It contends that the Work Zone Agreement sets forth different zone limits for Philadelphia and Wilmington, and that Carrier's unilateral combination of these two established separate zones in Advertisement No. 121-PETC-1093 is akin to the establishment of a new work zone in violation of both Rule 15 and the Work Zone Agreement. The Organization distinguishes Carrier's cited cases as having to do with different Agreement Rules and the issue of assignment of work cross zones, rather than bulletining a position with multiple zones. It notes that Carrier failed to prove its asserted defense of prior practice, and relies upon a 1988 letter from Assistant Chief Engineer Early to support its interpretation of the limitation on advertisements to a single work zone contained within Rule 15.

Carrier argues that it has been clearly established that it has the right to assign employees to work cross-zone service, citing Public Law Board No. 3932, Award 1; Third Division Awards 32223, 32219, 26372. It contends that the issue is whether an advertisement can accurately set forth the range of territory for which the Foreman will be held accountable and upon which the successful applicant will be selected.

Carrier asserts that the Organization failed to sustain its burden of proving that the Work Zone Agreement restricts the content of advertisements to a single work zone, relying upon Third Division Award 32217. It contends that it did not create a new work zone, but, rather, assigned a supervisory position responsibility for multiple work zones. Carrier avers that the formalizing of its cross-zone work assignments in a bulletin does not create a new work zone any more than the addition of a qualification creates a new job classification, citing Third Division Award 29863. Finally, Carrier notes that the Organization has not shown that there is any alleged aggrieved Claimant, or that any employee has been deprived of overtime, since the new position was awarded to the incumbent of the abolished position.

This case is remarkably similar to the facts and arguments presented by these same parties in Third Division Award 32217. In denying the claim in that case, the Board held:

"Although the Work Zone Agreement delineates two separate work zones for Catenary Foremen, it does not contain a specific prohibition against advertising a position which incorporates two work zones. The record shows that positions are advertised with territorial boundaries for purposes of ensuring that the assigned employee possesses the requisite qualifications for the position, and for purposes of overtime assignments. The Organization failed to establish how the advertisement of a position with two working zones, under the circumstances of the instant case, is inconsistent with the underlying concerns of qualification and overtime assignment."

That case did not involve the creation of a new position, but, rather, the advertisement of a Foreman position which had been posted and worked as a two zone territory for four years prior to its being advertised and held as a one zone position for five months preceding the bulletin there in issue. A careful review of that Award reveals that the Board did not base its conclusion on this distinguishing fact, but rather, its

finding that the Organization failed to prove that either Rule 15 or the Work Zone Agreement prohibits advertising a position incorporating two work zones, where the Agreement has been held to allow for cross-zone service.

The record before us does not provide any basis for concluding that the findings and interpretations made in Third Division Award 32217 are inapplicable, patently erroneous or should not be followed. Accordingly, the claim 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 23rd day of November 1998.