

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35442
Docket No. MW-34320
01-3-97-3-931**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CP Rail System (former Delaware and Hudson
(Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Mr. D. Peterka, who does not hold seniority on the Susquehanna Sub-division to perform work on August 21, 22, 26, 27, 28, 29, September 3, 4 and 5, 1996 (Carrier’s File 8-00019 DHR).**
- (2) The Agreement was further violated when the Carrier assigned Mr. D. Peterka, who does not hold seniority on the Susquehanna Sub-division to perform work on September 9, 10, 11 and 12, 1996 (Carrier’s File 8-00020).**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Mr. T. Brown shall be compensated at his respective rate of pay for all time worked by Mr. D. Peterka on the dates in question.”**

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 instant claim challenges the Carrier's use of an employee across seniority district boundaries. On August 23, 1990, however, the parties entered into a Letter of Agreement that has come to be known as "Appendix J." It specifically provided that employees could be used across such boundaries on "... short term assignments, for periods of up to five (5) working days . . ." without violating any provisions of the Agreement.

The Carrier contends that Appendix J does not limit the number of assignments that may cross boundaries. It only limits their duration to five working days or less. The Carrier points out that none of the claim dates are for more than four consecutive days.

The language of Appendix J supports the Carrier's interpretation. It uses the plural terms "assignments" and "periods" rather than their singular forms. The claim dates depict periods of two days, four days, three days and four days. If they were separate short term assignments, they are explicitly permitted by Appendix J. If, however, they were not separate assignments but one or two longer duration projects that exceeded five days in total length, then they would not be protected by Appendix J.

The record before us contains insufficient information for us to determine the true circumstances underlying the claim. The Organization had the burden of proof to establish the essential elements of the claim. On this record, however, that burden has not been satisfied.

AWARD

Claim denied.

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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 26th day of April, 2001.