

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36858
Docket No. SG-36328
04-3-00-3-515

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (former Missouri Pacific):

Claim on behalf of T. K. Wilborn for payment of 48 hours at the half-time rate and payment of 65 cents per hour for 122 hours for skill differential pay. Account Carrier violated the current Signalmen’s Agreement, particularly Rule 7 and the Skill Differential Agreements dated November 24, 1992 and August 16, 1993 respectively. Beginning May 3, 1999 through May 15, 1999 Carrier failed to compensate the Claimant at the appropriate rate for services performed outside the limits of his assigned territory and failed to pay him skill differential pay for all services rendered while assigned to the position of Signal Maintainer at Dolton, Illinois. Carrier File No. 1197695. General Chairman’s File No. 99-35-C-A. BRS File Case No. 11452-MP.”

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 Organization filed claim by letter dated June 18, 1999 alleging that the Claimant, who was regularly assigned to Signal Gang 3934, was working off his assignment on position 3942 during the week of May 10 to 15, 1999. The Organization argued that because the Claimant worked off the boundaries of his assigned territory, he was entitled to additional compensation as per Rule 7(h). Additionally, because he performed skill differential work off his territory, he was entitled to skill differential payments as per Section 3(c) of the Skill Adjustment Agreement. The Organization maintains that the Claimant is entitled to compensation for the skill differential and for working off territory.

The Carrier denied the claim, pointing out that the Claimant did not submit for additional compensation for a Skill Differential in his payroll. It further pointed out that the Claimant was on a temporary assignment during the week of the alleged violation and that the assignment did not entitle him to off-territory pay for the area where he was assigned. The Carrier maintained that it had violated no Rule or section of any Agreement.

The Organization has the burden of providing evidence to establish the basis for the claim. Here, the Organization must prove that the Claimant performed work outside his assigned territories and performed skill differential work as covered by the Agreement. The evidence produced indicating that he was assigned signal construction and worked a maintenance position is not on point. The Carrier maintained that the Claimant was assigned a temporary position under Rule 21(e) to Watseka Territory due to an open position. This was the Claimant's assigned territory and we find no evidence provided by the Organization that he worked off this territory. Further, the fact that his payroll listed all work performed as

performed on Gang 3942, instead of 3934, is not on point as proof of a violation and was adequately refuted by the Carrier on the property stating:

“Your claim is for 48 hours of additional ½ time for work that was performed off the Relief Maintainers territory and on the Watseke Territory. In the Claimant’s own statement he provides that he ‘was told to move to Kankakee Super 8 so I could cover half of Mommence territory and all of Watseke Territory, MP 40 - MP 88.’ This statement concurs with Manager Douglas’s statement and shows that he was assigned to the Watseke territory from May 10th to the 15th. The mere fact that the Claimant reported his time in error to an incorrect gang number does not constitute an agreement violation.”

The Board fails to find substantial evidence of record that the Claimant was assigned off his territory. From this record, it appears that the Claimant was working his assignment and that the Organization failed to fulfill its burden of proving a violation of the Agreement. Accordingly, the claim is 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 28th day of January 2004.