

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39499
Docket No. SG-38770
09-3-NRAB-00003-050134
(05-3-134)

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

“Claim on behalf of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of J. E. Pruitt, for nine hours at time and one-half rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 44, when it used a junior employee from another seniority district (California Division) to perform work at Seneca Road on the Nevada Division and denied the Claimant the opportunity to perform this work. Carrier’s File No. 1392810. General Chairman’s File No. W-44-359. BRS File Case No. 13093-UP.”

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.

On February 14, 2004 and as a result of a malfunctioning crossing gate on Seneca Road in Reno, Nevada (located in an area covered by the Nevada Seniority District), the Carrier called the closest employee, J. Stahlman (a California Seniority District employee) who lived one hour away from the Seneca Road location rather than the Claimant (a Nevada Seniority District employee) who lived six hours away. This claim followed.

An emergency is “. . . [a]n unforeseen combination of circumstances which calls for immediate action.” See Third Division Award 36982. These disputes are fact-specific. Here, the Carrier received notification of a malfunctioning crossing gate at a crossing which, if the Claimant’s seniority was strictly followed, would have taken the Claimant six hours to get to. Instead, the Carrier reacted for obvious safety concerns by calling the employee living closest to the trouble spot (one hour away) - although that employee was from another seniority district. Under these specific facts - particularly given the fact that it would have taken the Claimant six hours to get to the trouble spot which was at a road crossing gate - we are satisfied that an emergency existed. The Carrier has broader latitude in assigning employees in emergencies and is not compelled to follow normal Agreement procedures in such circumstances. Third Division Award 36026, *supra*. This is such a case.

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 2nd day of February 2009.