

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39507
Docket No. SG-38731
09-3-NRAB-00003-050135
(05-3-135)

The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of J. M. Weaver, for 40 hours at the Signal Forman’s rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 40 and 44, when it used a junior employee from another seniority district (Zone 4, seniority district 12) to perform work between mileposts 203 and 220 on Zone 5, seniority district 13, and denied the Claimant the opportunity to perform this work. Carrier’s File No. 1394001. General Chairman’s File No. N 40 44 440. BRS File Case No. 13128-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.

The events giving rise to the instant dispute are as follows.

During the month of January 2004, the Carrier assigned Zone 4 Signal Foreman Caughron to run a Form "C" on Zone 5 territory. A Form "C" is a track bulletin which restricts the movement of trains and is used for the protection of workers and equipment in and around a live track area. The Signal Department utilizes Form "C" track bulletins in connection with taking grade crossing protection devices out of service. Roadway Worker Rules, as well as the Carrier's Operating Rules, require an employee to be in charge of communicating with train crews as well as other employees to ensure their safety in situations such as this.

On or about February 20, 2004, the Organization submitted a claim in which it maintained that by not assigning the Claimant to perform the work at issue, the Carrier violated Rules 40 and 44. The Carrier denied the claim contending that the situation was covered by Rule 36 which provides, in relevant part, that:

"Zone gangs may be at any location performing any agreement work. Zone gangs performing work on its own zone and on a seniority district where there are involuntarily furloughed employees will be headquartered or abolished at the written request of the General Chairman. Zone gangs will not work across zone lines if employees are involuntarily furloughed in the seniority district where the work is located. . . ."

The Carrier also asserted that no tests were performed by Caughron because he merely ran a Form "C."

It is undisputed that no employee was involuntarily furloughed in the Zone 5 territory at any relevant time associated with this dispute.

In response, the Organization maintains that Rule 36 is not applicable in the instant situation where Signal Foreman Caughron worked as the only individual assigned to this work group and was, therefore, a "lone worker." This fact becomes

significant, the Organization notes, due to the fact that it is well understood that the application of Rule 36 is reserved to members of zone gangs comprised of two or more employees working together.

Relative to the claim regarding the work at issue, the Organization noted:

“The issue at hand is the seniority district and the violation of the rules governing seniority districts as stated in the initial claim. Mr. Caughron holds seniority in zone 4 seniority district 12 which is the former Missouri Pacific Railroad. The claimant holds seniority in zone 5 seniority district 13 which is the former Chicago and Northwestern Railroad. The work claimed was performed in zone 5, which is the claimant’s seniority district and not Mr. Caughron’s seniority district.”

The Carrier’s June 14 response reiterated its position regarding the applicability of Rule 36, but also noted, in relevant part, that:

“You also allege foreman Caughron was performing work but have not provided any facts that negate the information provided to you by Ms. Allen. Your mere statement of a rule violation does not meet your required burden of proof.”

Having carefully reviewed the record, the Board is inclined to deny the claim. In reaching this conclusion, the Board took note of the well established fact that whereas the instant claim raises a matter of contract interpretation, it is the Organization which must bear the burden of proof. In applying this well established fact, it is significant to the Board that while the Organization maintains that the work at issue was scope covered work that could very well have been performed by the Claimant, it never specifically identified the work it claims in this proceeding, even when pressed by the Carrier to do so. Accordingly, the record is left with an unanswered and very relevant question, one which the Board may not answer by speculation or presumption. Therefore, we have no choice but to deny the claim. (See Third Division Awards 37291, 37242, and 35638.)

Given the rationale behind our denial, we need not address the applicability of Rule 36 in situations such as the one before us.

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.