

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39604
Docket No. SG-39373
09-3-NRAB-00003-060266
(06-3-266)

The Third Division consisted of the regular members and in addition Referee Joyce M. Klein when award was rendered.

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

STATEMENT OF CLAIM:

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

Claim on behalf of W. D. Baker, Jr., D. H. Grooms, C. D. Robb, L. T. Nickles, R. L. Key, for 200 hours each at their respective half-time rates of pay for February 8 through March 19, 2005; B. W. Boyd, for 165 hours at his half-time rate of pay for February 8 through March 9, 2005; S. J. Nichols, for 65 hours at his half-time rate of pay for March 7 through March 19, 2005; and B. R. Rodriguez II, for 85 hours at his half-time rate of pay for February 8 through February 22, 2005, account Carrier violated the current Signalmen’s Agreement, particularly Rules 36 and 44, when it required the Claimants to work off of their assigned territory and failed to compensate the Claimants, on the Fort Worth and Western Railroad, and failed to compensate them under the provisions of the Rules at the time and one-half rate of pay. Carrier’s File No. 1423768. General Chairman’s File No. S-36,44-683. BRS File Case No. 13594-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 December 2, 2004, the Carrier and the Organization met in Salt Lake City, Utah, and reached a verbal agreement to include within Zone 4 BNSF Railway Company trackage between Tower 60 and Tower 55 in Fort Worth which is leased to the Carrier to allow its employees to work on the trackage within this territory. The Carrier sent a written proposal dated December 20, 2004 confirming this understanding to the Organization. On April 21, 2005, the Organization signed the Agreement dated December 20, 2004. Subsequently, General Chairman Grover Pankey asked that the signed Agreement be re-dated and the same Agreement dated April 21, 2005 was signed.

By letter dated April 5, 2005, the Organization filed a claim contending that the Carrier violated Rules 36 and 44 when it failed to properly compensate the Claimants for additional half-time pay for all hours worked off their zone and on BNSF territory between February 8 and March 19, 2005. (The claim incorrectly identified the territory as belonging to the FWWR).

The Organization acknowledges the tentative agreement to the Carrier's proposal that its employees would perform maintenance on the territory involved in the BNSF lease. The Organization explains that it did not sign the Agreement until April 21, 2005 because it was trying to resolve claims on the FWWR. The Organization claims that its agreement with the Carrier permitting UP employees to perform maintenance on the territory involved in the BNSF lease was not effective until it signed that Agreement on April 21, 2005.

The Carrier asserts that the Agreement it reached with the Organization on December 2, 2004, a written copy of which was dated December 20, 2004 but not

signed by the Organization until April 21, 2005, is controlling and establishes the Carrier's right to assign work on the BNSF leased territory to Zone 4 employees and thus, the Organization's claims are unethical. Additionally, the Carrier contends that, under the terms of its lease, the territory is under the Carrier's control. The Carrier points out that the work performed by the Claimants was located on Carrier leased property and was within their district and their zone. The Carrier points out that, pursuant to an Award issued by Public Law Board No. 6459 in April 2006, when a lease grants control of disputed property to the Carrier, the Carrier's use of signal employees on that territory does not violate Rules 36 or 44 and the principle of stare decisis applies.

The Board is troubled that the Organization acknowledges that it reached an agreement in principle on December 2, 2004 and nevertheless proceeded to advance claims during the period between the date when it reached a tentative verbal agreement and April 21, 2005, the date when it ultimately signed that Agreement. Although the Organization delayed in signing the Agreement which was provided in writing in a letter dated December 20, 2004 while it determined the outcome of related claims on the FWWR, the Organization was not unaware of its agreement in principle that had been reached on December 2, 2004. Under such circumstances, the pursuit of these claims was not in good faith.

Additionally, as provided in the parties' Agreement, the Carrier assumed control of the leased territory on December 1, 2004. As found by Public Law Board No. 6459 in Award 14, once a lease agreement is made, employees within the effected zone "had the right to be used to perform the Carrier's signal department work in the leased territory" without violating Rule 36. Rule 36 provides in pertinent part, "if a Zone Gang is performing work off of its zone, the employees of that Gang will receive one and one-half time pay, up until the employees of the Gang qualify for double-time, at which time they will be paid at the double-time rate." Because the Carrier assumed control of the leased territory on December 1, 2004, and that leased territory was located within the Claimants' district and zone, the Carrier had the right to assign the Claimants to perform work on the leased territory. Therefore, the claim as presented is denied.

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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 1st day of April 2009.