

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40310
Docket No. SG-39613
10-3-NRAB-00003-060172
(06-3-172)

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe:

Claim on behalf of K. R. Dunkle, for 2 hours and 40 minutes at his time and one-half rate of pay on January 4, 2005 and 2 hours and 40 minutes at his time and one-half rate of pay on January 7, 2005, account Carrier violated the current Signalmen’s Agreement, particularly Rules 11, 12 and 45(K), when it failed to compensate the Claimant for two calls off of his assigned territory at Bemidji, Minnesota on January 4, 2005 and at Buxton, North Dakota on January 7, 2005. Carrier’s File No. 35 05 0032. General Chairman’s File No. 05-026-BNSF-154-TC. BRS File Case No. 13409-BNSF.”

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 Claimant was assigned as a Signal Electronic Technician headquartered at Sioux Falls, South Dakota. This dispute developed when the Carrier denied overtime compensation for trouble calls performed by the Claimant on January 4 and 7, 2005. The Organization filed the instant claim, alleging that the Claimant had been working off of his assigned territory and, therefore, the compensation was warranted in accordance with RULE 45 – RATES OF PAY which reads, in relevant part, as follows:

“K. If, after assigned working hours, a maintenance employee is used off his assigned territory, he will be compensated under the call rule.”

The Carrier denied the claim, contending that the Claimant was not working off of his assigned territory, because under the parties’ Agreement, he was responsible for calls anywhere on his seniority district.

Because this is a contract dispute, the burden rests with the Organization to demonstrate a violation of the Agreement. After careful consideration of the record in its entirety, the Board finds that the Organization’s burden has not been met.

Traditional and well-established principles of contract interpretation do not support the Organization’s position. First, Agreement language cannot be read in a vacuum and should not be interpreted out of context. The foregoing language in Rule 45(K) must be read in conjunction with Rule 2, which expressly defines which employees have “assigned territories” other than their entire seniority districts. The Organization has not shown that the Claimant belongs to a class that has an “assigned territory” as that term is defined in Rule 2. The Organization relied solely on a supervisory email referencing the “territories” for certain Signal Electronic Technicians, but the email cannot modify or amend Rule 2, which

provides that Signal Electronic Technicians may be used anywhere on the seniority district.

Second, if we were to adopt the Organization's position, Rule 2 would become a nullity. Consistent with the arbitral doctrine that parties to an agreement generally do not negotiate surplus or meaningless language, the Board must conclude that Signal Electronic Technicians are not among those employees who have assigned territories under Rule 2. The Claimant was responsible for calls anywhere on his seniority district and, therefore, he was not entitled to compensation under Rule 45(K). This claim must be 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 1st day of March 2010.