

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43278
Docket No. SG-43872
18-3-NRAB-00003-160664**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 C.W. LaBelle, for 165 hours at his half-time rate of pay, and any additional half-time pay for instances he is assigned to work off his assigned Seniority District, account Carrier violated the current Signalmen’s Agreement, particularly Rules 24, 34, and 65, when on April 20, 22, 23, 24, 27, 28, 29, and 30, 2015, and on May 11, 12, 13, 14, 18, 19, 20, 25, 26, 28 and 29, 2015, Carrier assigned the Claimant to perform work off his assigned Seniority District without properly compensating him at the time and one-half rate of pay. Carrier’s File No. 1629644. General Chairman’s File No. UPGCW-24-34-65-0234. BRS File Case No. 15460-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 Organization filed the instant claim on the Claimant's behalf, alleging that the Carrier violated the parties' Agreement when it assigned the Claimant to perform work off of his assigned seniority district during April and May 2015, but failed to compensate the Claimant at the time and one-half rate for such work. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier unilaterally decided not to properly compensate the Claimant for the work that it assigned him to perform off of his seniority district, because Rule 24 clearly states that employees shall be compensated at the time and one-half rate of pay for such work, because the work at issue is covered under the FRA Hours of Service Law, and because there is no support for the Carrier's position.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant never performed duties that triggered the Agreement's Scope Rule, because the Carrier has a historical practice of allowing employees to engage in "employee-led" safety programs such as the activity involved in this dispute, because the Claimant was properly paid and is not entitled to receive any additional compensation, and because the Organization has failed to meet its burden of proof.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has failed to meet its burden of proof that the Carrier violated the Agreement when it assigned the Claimant to go through a training session in another seniority district. Therefore, this claim must be denied.

The Organization relies on Rule 24, which states, in part:

"If a headquartered gang is performing work off of its district, the employees of that gang will be paid at the one and one-half rate for that

work except in those instances where double-time pay would be appropriate after 16 hours.

The key words in that section are “performing work.”

The Carrier points out that the Claimant involved here did not perform work, but instead he was given the assignment of providing safety training to his fellow workers. That type of training is not “scope-covered” work as set forth in the parties’ collective bargaining agreement. The record reveals that the Carrier has a historical practice of sending employees off-district or off-zone to attend or participate in training activities. The record is clear that the Claimant did not provide any scope “work” as set forth in the Agreement. For example, he did not do any signal maintaining work or any of the other responsibilities set forth in the Scope Rule.

Since the Organization has failed to meet its burden of proof in this case, the Board has no choice other than to deny the claim.

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 26th day of June 2018.