Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 44090
Docket No. SG-45552
20-3-NRAB-00003-190433

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

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

STATEMENT OF CLAIM:

"Claim on behalf of L.U. Patterson and A.D. Wilson, for 228 hours each at their respective half-time rates of pay; account Carrier violated the current Signalmen's Agreement, particularly Rules 26, 34, and 65, when on February 5–13 and 19–27, 2018, it required the Claimants to work off their assigned Zone and failed to compensate them at the time and one-half rate in accordance with the Agreement."

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.

In the instant claim, the Organization alleges the Carrier violated the Agreement when it required the Claimants to work off their assigned Zone (Zone 4 - territory covered by seniority district 12) and failed to compensate them in accordance with Rule 26.

In relevant part, Rule 26 – Traveling Gang Work, states the following:

> **"…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. If a zone gang is performing work off 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…"**

In summary, the Organization argues a) the Claimants performed work outside of their assigned seniority district on the Edinburg Line, which is leased by the Rio Valley Railroad, b) the Edinburg Line is not encompassed in the Zone 4 territory, and c) the Carrier's positions are unsubstantiated.

In summary, the Carrier argues a) the Edinburg Line is owned by the Carrier and leased to the Rio Valley Railroad, b) the Edinburg Line is a branch line within Zone 4 – territory covered by seniority district 12, c) although the Carrier leases the Edinburg Line to the Rio Valley Railroad, the Carrier, at the time of dispute, was responsible for updating the Line, d) Award No. 14 of PLB 6459 is applicable here, e) the Organization failed to satisfy its burden of proof, and f) the remedy demand is not based on the Agreement.

Central to the resolution of the instant case is the Board's determination as to whether the Edinburg Line was part of Zone 4 at the time of dispute. Given the facts presented here and after a thorough review of the record, the Board finds the Edinburg Line to fall within Zone 4 - territory covered by seniority district 12.

There is no disagreement here that a) the disputed work occurred on the Edinburg Line, b) the Carrier owns the Edinburg Line and is leasing the property to the Rio Valley Railroad, and c) the Claimants were upgrading the signal system to FRA Class 1 standards. The Carrier argues that the Edinburg line is a branch line located within Zone 4 – territory covered by seniority district 12, while the Organization argues that the location is not identified in Rule 34 (nor in the Timetables) and cannot therefore be considered part of Zone 4, seniority district 12.

Although the Board agrees with the Organization in that the Edinburg location is not specifically identified in Rule 34, the language of Rule 34, NOTE, states "The above described seniority districts include all branches, industrial leads, industrial tracks and yards within those territories..." In other words, Rule 34, NOTE, contemplates that not all allowed employee work locations need to be specifically identified within the Rule itself.

The Carrier argued that Award No. 14 of PLB 6459 is seemingly identical to the current dispute and should be applied to the case at hand while the Organization argued that the current case differs significantly from the fact pattern of Award No. 14. Although the Board recognizes these differences, the Board found the reasoning behind Award No. 14 to be applicable here. In Award No. 14, a lease agreement existed whereby the Organization argued the Claimants were working off their zone and were improperly compensated. In Award No. 14, Referee Mason considered the lease agreement in denying the claim because the lease agreement specifically identified the territory in dispute and granted the Carrier the right to upgrade the identified territory. Such is the case here. Although under Award No. 14 the Carrier was the Lessee, and here the Carrier is the Lessor and owner of the property, the lease agreement between the Carrier and the Rio Valley Railroad, like in Award No. 14, specifically identifies the territory in dispute, and grants the Carrier rights regarding upgrades to the territory in dispute.

Given all the above, the use of Zone 4 employees in the leased territory did not violate the Agreement. As a result, the claim must be denied.

Although the Board may not have repeated every item of documentary evidence, nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

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 11th day of August 2020.