PUBLIC LAW BOARD NUMBER 3932

Award Number: 2
Case Number: 2

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM

"This claim is on behalf of Mr. D. Keeley for time made by T. Fulton.

On Friday, March 16, 1984, Mr. Fulton was used to travel a burro crane from QX yard to Paoli from 3:30 P.M. to 5:30 P.M. On Saturday, March 17, 1984, Mr. Fulton was used to install a switch point and stock rail at point and stock rail at Paoli interlocking and then pilot the crane back to QX yard.

As I explained to you in our phone conversation on Friday morning, this work was done in the Philadelphia work zone and accrues to the Philadelphia Diviaion (sic) gang before the gang located in Downingtown.

In light of this violation of Rules 14 and 55, I am claiming a total of 8 hours at time and one-half."

FINDINGS

At the time of the dispute in question, Claimant was employed as a foreman at Carrier's Philadelphia Division. By letter dated March 28, 1984, the Organization filed claim on behalf of Claimant seeking compensation on the grounds that Carrier improperly allowed a non-zone 4 employee to perform service in zone 4 on March 16, 1984 and March 17, 1984. Carrier denied the Organization's claim by letter dated April 11, 1984.

The issue to be decided in this dispute is whether Claimant was entitled under the Agreement to perform the work in question on the specified dates.

The Organization contends that Carrier violated Rules 14 and 55 of the Agreement when it allowed a zone 2 employee to perform service in zone 4 on the dates in question.

Initially, the Organization cites Rule 14, covering "Seniority Districts - Working Zones", and argues that this rule prohibits Carrier from allowing employees from zone 2 to perform service in zone 4 absent specific circumstances, which the Organization alleges are not present in the instant dispute. Specifically, the Organization cites Section C of Rule 14 which states "...work...will be advertised to the working zone..." The Organization contends that this section indicates that only District Gangs, under Rules 89 and 90, may perform work outside of their normal territory. The Organization further contends that the employee in question was not performing service in accordance with Rules 89 and 90, and that therefore Rule 14 is fully applicable to the dispute at hand. The Organization maintains that the language of Rule 14 is clear and prohibits Carrier from assigning "cross-zone" service.

The Organization additionally argues that Carrier has failed to provide any evidentiary support for its position that the service in question was proper under the Agreement. The

Organization initially argues that Rule 79, cited by Carrier, has no applicability to the present dispute, since that rule only covers emergency situations and is in effect only a "pay" rule. The Organization further argues that Carrier's allegation concerning the propriety of cross-zone service when such service involves overtime lacks any evidentiary or contractual support. Finally, the Organization maintains that Carrier has failed to justify its failure to call Claimant for overtime service on the dates in question, since Claimant was the senior qualified employee in zone 4 on those dates.

The position of the Carrier is that the cross-zone service complained of in this case is proper under the Agreement, and that the Claim has no merit.

Initially, Carrier argues that neither Rule 55 nor Rule 14 was violated on the dates in question. Carrier argues that Rule 55 applies to overtime service and the limits placed on Carrier regarding that service. Carrier maintains that the Organization has failed to establish that Claimant's rights were violated under Rule 55 or any other provision dealing with overtime. Carrier further maintains that on both of the dates in question the zone 2 employee performed service within the confines and long-standing application of Rule 55.

Carrier further argues that Rule 14 was not violated in any way. Carrier maintains that Rule 14 does not prohibit it from

using employees in cross-zone service, and that the Organization has failed to point to any specific language under Rule 14 to support its claim. Carrier argues that Rule 14 is only applicable when a change in work zones occurs or positions within work zones are advertised, which it alleges did not take place in the present case. Carrier therefore argues that Rule 14 fails to substantiate the Organization's position, since both Claimant and the employee in question had Southern District seniority, indicating that both employees were properly entitled to perform the service in question.

Carrier argues additionally that both the Agreement and past practice indicate that such service (cross-zone) is both contemplated and accepted. Carrier cites several provisions of the Agreement which it alleges indicate that such service is contemplated, since those provisions dictate procedure and compensation for such service. Carrier additionally cites the work schedule of the Penn Coach Yard Wire Train to support its allegation that cross-zone service is and has been performed on a regular basis.

Finally, Carrier cites the fact that the Organization filed a Section 6 Notice on August 21, 1984 in an attempt to modify the present Agreement to disallow cross-zone service. Carrier maintains that the Section 6 Notice is conclusive proof that the Agreement currently does not prohibit such service, since otherwise the Organization would have had no reason to file the

Section 6 Notice.

After review of the record, the Board finds that the Organization's Claim must be denied.

This case involves the identical issue dealt with by this Board in Case No. 1. In that case, we found that the Organization failed to sustain its burden of proof regarding the alleged violations. We find that the Organization has similarly failed in the present case to establish any violation of the Agreement.

As stated in our findings in Case No. 1, the key provision relied upon by the Organization is Rule 14, and, as in Case No. 1, we find here that Rule 14 in no way prohibits Carrier from assigning cross-zone service. There is no language in Rule 14 that indicates in any way that Carrier may not utilize an employee for cross-zone service. Section C of Rule 14, cited by the Organization, merely indicates that certain work will be advertised to the working zone, and that working zones shall not be changed without agreement. The Organization has failed to point to any specific provision in Rule 14 that Carrier violated through its actions in the present case. Similarly, we find that Rule 55 in no way prohibits Carrier from utilizing an employee for cross-zone service. The Organization has failed to establish that any overtime rights of Claimant were violated by Carrier. We therefore find Rule 55 unsupportive of the Organization's

claim.

As stated in Case No. 1, we find that, contrary to the Organization's position, Carrier has established that cross-zone service is relatively commonplace; and that other provisions of the Agreement indicate that such service is acceptable, so long as Carrier follows travel and compensation procedures. Finally, the Organization's Section 6 Notice serves as persuasive evidence that the current Agreement does not prohibit the complained of practice.

AWARD

Claim denied.

Nicholas Zumas
Neutral Member

Carrier Member

Organization Member

DATE: 8-26-86