PUBLIC LAW BOARD NUMBER 3932

Award Number: 4
Case Number: 4

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM

"This claim is on behalf of D. Alley for time made by G. Villano.

On March 6, 1984 (8 hours) and March 7, 1984 (8 hours), Mr. Villano was used to operate a burro crane to remove rail at Brill Interlocking. This work accrues to the Philadelphia Division as per Rule 14 of the Agreement. If additional help was needed on these days, Mr. Alley should have been utilized on an overtime basis ahead of Mr. Villano, who holds a position in the Baltimore Division.

Due to this violation of Rules 14, 55, and 56, I am claiming 16 hours at time and one-half for Mr. Alley. Please advise if this claim will be honored and the pay period in which it will be paid."

FINDINGS

Claimant, at the time of the dispute in question, was employed as a burro crane operator at Carrier's Philadelphia Division. By letter dated March 17, 1984, the Organization filed Claim on behalf of Claimant seeking compensation on the basis that Carrier allowed a zone 1 employee to perform service in zone 4 on March 6 and 7, 1984, in violation of the Agreement.

The issue to be decided in this dispute is whether Claimant was entitled under the Agreement to perform the service in question.

The position of the Organization is that Carrier violated the Agreement when it allowed a zone 1 employee to perform service in zone 4, thereby depriving Claimant of his rightful assignment. Specifically, the Organization contends that Carrier violated Rules 14, 55 and 56 of the Agreement.

Initially, the Organization cites Rule 14 of the Agreement to support its allegation that Carrier may not utilize employees for cross-zone service except under limited circumstances. The Organization maintains that no such circumstances existed on the dates in question, and that Carrier was therefore prohibited under Rule 14 from using a zone 1 employee to perform service in zone 4. The Organization further maintains that Rules 55 and 56 were violated on the dates in question through Carrier's use of the zone 1 employee in zone 4. Finally, the Organization alleges that other provisions of the Agreement prohibit Carrier from violating the integrity of work zones through the use of employees in cross-zone service. The Organization contends that the clear language of the Agreement provides that Carrier may not use an employee on a foreign zone in order to deprive an employee from the home zone of his rightful service.

The position of the Carrier is that it may require an

employee to perform service in a zone other than his designated zone without violating the Agreement. Carrier maintains that the Agreement in fact recognizes and authorizes such service.

Initially, Carrier argues that none of the rules cited by the Organization prohibits cross-zone service. Carrier argues that Rule 14 nowhere states that an employee from one zone cannot perform service in another zone. Carrier maintains that Rule 14 only prohibits it from changing a work zone without agreement, which it did not do in the present case. Carrier further maintains that Rules 55 and 56 have no relevance to the claim at hand since the work performed was not at an overtime rate. Carrier argues that no rule under the Agreement prohibits cross-zone service, and that several provisions indicate that such service is contemplated. Carrier specifically cites Rules 42, 63 and 79 to substantiate its position that such service is contemplated under the Agreement. Carrier additionally cites the schedule of the Penn Coach Yard Wire Train where cross-zone service was performed on various occasions, as well as other examples of previously performed cross-zone service. Carrier maintains that this evidence clearly establishes that both the Agreement and past practice support its position. Finally, Carrier cites the fact that on August 21, 1984, the Organization filed a Section 6 Notice seeking to change Rule 56 to prohibit the cross-zone service complained of in this case. Carrier argues that this Notice serves as conclusive evidence that the present Agreement does not prohibit such service.

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

This case presents facts similar to those before this Board in Case No. 1. As we stated in that dispute, the Organization has the burden of establishing that the work in question was reserved for Claimant under the Agreement. We find in the present case that the Organization has failed to meet that burden.

The Organization has failed to cite any provision of the Agreement prohibiting Carrier from utilizing an employee in cross-zone service. Rule 14 nowhere indicates that Carrier may not utilize such service. Rule 14 only prohibits the changing of work zones without agreement. Further, the Board finds that Rules 55 and 56 do not support the Organization's claim, since it has not established that Claimant was entitled to perform overtime on the dates in question. Carrier has demonstrated that such service has been performed previously, and that the Agreement contemplates such service so long as certain procedures are followed. Finally, the Organization's Section 6 Notice serves as further evidence that no Agreement prohibition exists concerning cross-zone service. In sum, the Organization has failed to establish, and we fail to find, any specific prohibition against the type of service performed in the present case.

AWARD

Claim denied.

Nicholas Bymas
Neutral Member

Carrier Member

J. L. Dodd
Organization Member

DATE: 8-26-86