PUBLIC LAW BOARD NUMBER 3932

Award Number: 5
Case Number: 5

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM

"This claim is on behalf of F. Banford, Truck Driver, R.O.W. clean-up gang, for time made by G. Gambino, track (sic) driver, Support Gang G-252 on the following dates:

1.) Saturday, November 12, 1983, performing R.O.W. clean-up at Darby #4 track, 7:00 A.M. to 4:00 P.M. for 9 hours at time and one-half.

2.) Sunday, November 13, 1983, performing R.O.W. clean-up at Darby #4 track; 13 hours at time and one-half.

3.) Saturday, November 19, 1983, performing R.O.W. clean-up at Darby #4 track; 11 hours at time and one-half.

4.) Sunday, November 20, 1983, performing R.O.W. clean-up at Darby #4 track; 10 hours at time and one-half.

5.) Saturday, November 26, 1983, performing R.O.W. clean-up at Darby #4 track; 12 hours at time and one-half.

This claim is for a total of 55 hours at time and one-half due to violation of Rule 55 and Rule 14.

Mr. Gambino's gang was advertised to zone 2, while Mr. Banford's was advertised to zone 4, and therefore, should have been utilized first."

FINDINGS

Claimant, at the time of the dispute in question, was

employed as a Truck Driver at Carrier's Philadelphia Division. By letter dated December 19, 1983, the Organization filed Claim on behalf of Claimant seeking compensation on the basis that Carrier allowed a zone 2 employee to perform service advertised to zone 4 and in zone 4 on November 12, 13, 19, 20 and 26, 1983, in violation of the Agreement. The Organization's claim was denied by Carrier.

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

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

Initially, the Organization cites Rule 14, covering "Working Zones", and argues that this rule prohibits Carrier from using an employee to perform work that has been advertised to another zone. The Organization cites part C of Rule 14 which states "normal maintenance work...will be advertised to the working zone...", and argues that this language can only be interpreted to mean that work advertised to zone 4 cannot be performed by zone 2 employees, except in special circumstances, which the Organization alleges were not present. The Organization maintains that since the work in question was advertised in zone

4, only eligible zone 4 employees had the right to perform that work. The Organization contends therefore that Carrier violated both Rules 14 and 55 (concerning overtime) by failing to allow Claimant to perform work advertised to his zone on the dates in question.

Finally, the Organization contends that other provisions of the Agreement support its position that Carrier must respect the integrity of work zones. The Organization cites Rules 89 and 90 of the Agreement, and argues that these rules, when read in relation to Rule 14, indicate that work zones must be respected. The Organization further cites the November 3, 1976 Agreement pertaining to Rules 89 and 90, which it alleges further indicates that zone work integrity must be observed absent special circumstances. The Organization maintains that the Agreement as a whole clearly contemplates that work assigned to one zone may not be performed by an employee of another zone.

The position of the Carrier is that it is not prohibited in any way by the Agreement from requiring an employee to perform work in a zone other than his home zone.

Initially, Carrier argues that the rules cited by the Organization nowhere indicate that the work in question was reserved for any particular zone. Carrier contends that Rule 14 only indicates that assignments will be advertised within a zone, and does not indicate that such assignments are exclusively

deemed to a designated zone. Carrier argues that mere advertising does not confer exclusive rights to a position, and cites awards to support its contention. Carrier further argues that the work in question belonged to the Seniority District as a whole, not to an individual work zone, and that therefore Claimant was not exclusively entitled to the work in question. Finally, Carrier cites a Section 6 Notice filed by the Organization on August 21, 1984, and alleges that the Notice clearly indicates that the practice complained of is not restricted by the Agreement, since otherwise the Organization would have had no motive for filing the Notice.

Carrier argues additionally that Rule 55 does not exclusively reserve overtime work for work zones. Carrier maintains that Rule 55 only requires that the work be ordinarily and customarily performed by the employee in question, which Carrier contends was the situation in the present case. Carrier alleges that the work in question, namely the clean-up of the Right of Way, has been performed by various employees and is not reserved to any particular employee group or zone. Carrier further alleges that Claimant had only performed the type of work in question once, while the employees performing the service on the dates in question had customarily performed such service.

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

We find that the Organization has failed to meet its burden of establishing that Claimant had an exclusive right to perform the work in question. We find that the rules cited by the Organization do not support the Claim. Rule 14 refers only to the advertising of work within work zones. The Organization has failed to point to any language restricting Carrier from using employees from a zone other than the advertised zone to perform service. Absent such language, we do not find Rule 14 restricts the work performed in this case. Similarly, we find no language in Rule 55 indicating that assignment or overtime work is reserved by work zone designation. Rule 55 does not mention work zones, but rather only requires that the work be "ordinarily and customarily" performed by the employee in question. The Organization has failed to establish that either Claimant ordinarily performed the work in question or that the non-zone 4 employee(s) did not ordinarily perform such work. We therefore find Rule 55 equally unsupportive of the claim.

AWARD

Claim denied.

Nicholas Kumar
Neutral Member

Carrier Member

Organization Member

DATE: 8-26-86