PUBLIC LAW BOARD NUMBER 3932

Award Number: 1
Case Number: 1

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. R. Liszewski for time made by G. Brown.

On Friday, March 16, 1984, Mr. Brown 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. Brown operated the burro crane to replace a switch point and stock rail in Paoli interlocking and traveled 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 Division 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

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 28, 1984, the Organization filed claim on behalf of Claimant seeking compensation on the grounds that Carrier improperly allowed another employee to perform service that Claimant was entitled to perform under the Agreement.

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

The Organization contends that Carrier violated Rules 14 and 55 of the Agreement by allowing a non-Philadelphia Division (zone 4) employee to perform service within the zone 4 area.

Initially, the Organization cites Rule 14, covering "Working Zones", to support its position that Carrier is obligated to assign work on the basis of those zones. Specifically, the Organization cites Section C of Rule 14 which provides that "Normal maintenance work for track department and Bridge and Building Department will be advertised to the working zone..." The Organization argues that absent specific circumstances (i.e. work assigned to Rule 89 or 90 District Gangs), Carrier cannot take work assigned to one zone and transfer it to another zone, and alleges that no such circumstances exist in the present case.

The Organization further argues that Rule 79, cited by Carrier, has no application to the facts in this case. The Organization alleges that Rule 79 is designed to cover emergency situations during which Carrier is forced to use employees outside of their regular zones, which the Organization contends did not exist in the present case. The Organization further asserts that Rule 79 is merely a "pay" rule and has no relevance to issues of seniority or work zones, and cites awards to support its allegation. The Organization additionally argues that

Carrier's assertion that it may require an employee to perform service in another zone if that service constitutes overtime lacks any contractual support. The Organization maintains that Carrier has failed to establish any right under the Agreement to require such service, and that other provisions of the Agreement clearly prohibit Carrier's right to do so.

The position of the Carrier is that it acted within its rights under the Agreement when it allowed a zone 2 employee to perform service in zone 4 on March 16 and 17, 1984.

Initially, Carrier denies that Rule 55, concerning overtime, was violated on the dates in question. Carrier alleges that the overtime assignment on March 16, 1984 was a continuation of the employee's regular assignment, in accordance with the long-standing application of Rule 55. Carrier further alleges that the assignment on March 17, 1984 involved work usually performed by the employee in question, and that therefore Rule 55 was fully complied with on that date.

Carrier further argues that Rule 14 in no way prohibits it from allowing an employee to work in a zone other than his regular zone. Carrier argues that Rule 14 has no applicability to the present case, since it did not change the parameters of any work zone or make other changes within the purview of Rule 14. Carrier maintains that Rule 14 deals with work zones and seniority districts, and argues that the Organization's attempt

to equate those two concepts is completely without merit. Carrier alleges that only district seniority has relevance concerning jurisdiction of work, not work zones. Carrier further alleges that the employee in question had equal seniority to Claimant within the district, and that therefore he was fully eligible to perform the work. Finally, Carrier argues that its only obligation under the Agreement is to ensure that an employee begins and ends his tour of duty at his designated headquarters, which the employee in question did on the dates in question.

Carrier maintains that the Agreement allows for cross-zone service, and cites Rules 41, 63 and 79 to substantiate its position. Carrier argues that these rules, which outline its obligations under situations such as that in the present case, indicate clearly that such service is proper under the Agreement. Carrier alleges that such service has and continues to be routinely assigned, and cites the fact that the Penn Coach Yard Wire Train has often worked off its normal work zone and even off its normal seniority district. Carrier cites other examples of cross-zone service previously performed, and argues that this evidence establishes the long-standing and legitimate nature of the service in question.

Finally, Carrier alleges that the Organization's Section 6 Notice filed August 21, 1984 was an effort to change Rule 56 to prohibit such assignments. Carrier argues that the Section 6 Notice serves as conclusive proof that no prohibition exists in

the Agreement, since otherwise the Organization would have no motive for the request.

Carrier concludes that the claim should be rejected for lack of contractual support and because the claim is excessive, in that Claimant was fully utilized on March 16, 1984.

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

In a case such as this, the burden of proof rests with the Organization to establish that the work in question was reserved for Claimant under the Agreement. We find that the Organization has failed to meet that burden in all respects.

Initially, we find that Rule 14 nowhere probhibits Carrier from using employees in "cross-zone" service. Rule 14 merely designates the different zones and the advertising of positions within those zones. The Organization has failed to demonstrate any language prohibiting Carrier from utilizing employees in "cross-zone" service. Further, we find that Rule 55 is equally unsupportive of the Organization's position. That Rule would only be applicable if it were established that Claimant was entitled to perform overtime work on the dates in question. Since we find no such entitlement under other provisions of the Agreement, Rule 55 lacks applicability to the present dispute. Contrary to the Organization's position, we find that Carrier has

provided substantial evidence concerning past practice to indicate that "cross-zone" service has been utilized previously in several areas. Finally, the Organization's Section 6 Notice, while not dispositive, serves as further probative evidence that the Agreement presently does not prohibit the type of service complained of. In sum, the Organization has failed to establish, through contractual support or evidence of past practice, that Carrier is prohibited from allowing an employee to work in a zone other than his designated zone.

AWARD

Claim denied.

Nicholas Kymar
Neutral Member

Carrier Member

Organization Member

DATE: 8-26-86