

PUBLIC LAW BOARD NUMBER 3932

Award Number: 3

Case Number: 3

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM

"This claim is on behalf of P. Collins for time made by K. Henning.

On March 6, and 7, 1984 (8 hours each day), Mr. Henning was used to pilot the Wilmington Sub-Div. burro crane removing 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 dates, Mr. Collins should have been used on an overtime basis ahead of Mr. Henning, 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. Collins."

FINDINGS

Claimant, at the time of the dispute in question, was employed as a Foreman 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 an employee outside of Claimant's zone to perform service within Claimant's zone 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 work in question.

The position of the Organization is that Carrier violated the Agreement when it allowed a Zone 2 employee to perform service in Zone 4 on the dates in question. Specifically, the Organization alleges that Carrier violated Rules 14, 55 and 56 of the Agreement.

The Organization initially cites Rule 14, covering "Working Zones", which states "normal maintenance work...will be advertised to the working zone...Seniority Districts and working zones...will not be changed except by agreement..." The Organization contends that Rule 14 clearly delineates between working zones and prohibits Carrier from using Zone 2 employees in Zone 4 areas except under certain circumstances, which the Organization alleges did not exist on the dates in question. The Organization contends that other provisions of the Agreement indicate that the integrity of working zones may not be violated by Carrier absent specific agreement.

The Organization further contends that Carrier violated Rules 55 and 56 of the Agreement by failing to allow Claimant to perform overtime service to which he was entitled. The Organization alleges that Carrier was obligated under Rules 14 and 55 to call Claimant to perform the service in question, and its failure to do so warrants the compensation sought.

The position of the Carrier is that it may utilize employees in cross-zone service without penalty under the Agreement.

Initially, Carrier denies that any provision of the Agreement prohibits it from using a Zone 2 employee in Zone 4 areas. Carrier argues that Rule ~~24~~¹⁴ nowhere prohibits it from utilizing employees for cross-zone service, and that the Organization has failed to point to any part of Rule ~~24~~¹⁴ specifically prohibiting such service. Similarly, Carrier argues that Rules 55 and 56 have no relevance to the present case, since Claimant has not demonstrated any entitlement to perform such overtime service on the dates in question.

Carrier further argues that other provisions of the Agreement indicate that such service is not only unprohibited, but is specifically contemplated. Carrier cites Rules 41, 63 and 79 to substantiate its position that cross-zone service is recognized as proper under the Agreement. Carrier further cites the schedule of the Penn Coach Yard Wire Train, which it alleges demonstrates clearly that cross-zone service is commonly performed by its employees. Finally, Carrier cites a Section 6 notice filed by the Organization on August 21, 1984, where the Organization attempted to modify Rule 56. Carrier alleges that the Section 6 notice serves as conclusive evidence that the Agreement does not currently prohibit cross-zone service. Otherwise the Organization would have had no motive to file the notice.

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

This case involves facts similar to those before this Board in Case No. 1. As in Case No. 1, we find in the present case that the Organization has failed to sustain its burden of proof by establishing a violation of the Agreement.

Initially, we find that none of the rules cited by the Organization supports the claim presented. Rule 14, relied upon by the Organization, contains no language prohibiting Carrier from using Zone 2 employees in Zone 4 areas. Rule 14 only requires Carrier to advertise positions within zones and to refrain from changing working zones without agreement. The Organization has failed to cite any part of Rule 14 violated by Carrier through its actions in the present case. Moreover, Rules 55 and 56 have no relevance to the claim presented, since there has been no demonstration that Claimant was entitled to perform overtime service on the dates in question, or that the Zone 2 employee performed overtime service in violation of Rule 56. Additionally, we find that other provisions cited by the Organization fail to indicate that cross-zone service is prohibited.

AWARD

Claim denied.

Nicholas Kumar
Neutral Member

Sc. Hing
Carrier Member

J. Ball
Organization Member

DATE:

8-26-86