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**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13647

Docket No. 13555

01-2-00-2-32

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(Brotherhood Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 12 when they arbitrarily assigned Carman Guy N. Patterson to a position, different than the one that he had bid, without abolishing his position.
2. That accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Guy N. Patterson in the amount of eight (8) hours pay at the overtime rate for each day he was forced to work his bulletin rest days, effective January 23, 1999 until he is properly returned to his regular assigned position.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant held position C-41, with rest days of Saturday and Sunday. He was advised on January 18, 1999 that he was assigned to position C-76, with rest days of Monday and Tuesday. Position C-41 was not abolished. At the time, position C-76 was held by a junior employee with only seven days' service with the Carrier. The Carrier states that it changed the Claimant's assignment because the employee assigned to position C-76 was not yet fully qualified and was not able to cover the assignment on Saturday and Sunday in the absence of supervision on these days.

Rule 12.4, cited by the Organization, reads in pertinent part as follows:

"(a) . . . Employees awarded positions will occupy those positions on the next day they are scheduled to work.

(b) In the daily assignment of work to employees awarded positions under this Rule, fitness, ability and qualifications being equal, seniority shall prevail.

(c) The provisions of paragraph 12.4(b) notwithstanding, the Carrier has the right to rotate employees as need to maintain requisite fitness, ability and qualifications. This right will not be used as a device to circumvent the provisions of paragraph 12.4(b)."

The Carrier argues that it reassigned the Claimant under the terms of Rule 12.4(c). It is clear, however, that the purpose was not to maintain the Claimant's "fitness, ability and qualifications" but rather to fill in for the other employee's lack of experience and qualification at the time. While the move may have been permissible on a temporary basis, it does not establish the right to deprive the Claimant of the assigned rest days of his regular position.

As remedy, the Board concludes that the Claimant is entitled to premium pay for being assigned to work on his rest days. The appropriate remedy is that the Claimant shall receive the difference between the premium rate of pay and his straight time rate for those Saturdays and Sundays he was required to work on position C-76, when his regularly assigned position had not been abolished.

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AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of September, 2001.