

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19638  
Docket Number SG-19374

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(The Denver Union Terminal Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Denver Union Terminal Railway Company that:

(a) Inasmuch as Mr. K. E. Persichetti did not bid on position of Lead Signalman's job left vacant by assignment made on Bulletin #2 and **rebuletined** by Bulletin #3, both of December 1, 1969, and was assigned arbitrarily from position Signalman No. 5 which he held and which still existed--as it had not been bulletined as abolished, suspended, nor any notice to this effect posted--we submit **thathe** wan **improperly** assigned and therefore **should be compensated at** the punitive rate for this time.

Inasmuch as he was not allowed to relieve the third trick as provided in Rule 20 and Letters of Understanding as pointed out in **the** following quoted File # **NRAB-1313-D.U.T.**, this **proves** that he was **assigned** to other duties and, since he **should** have **been** working position Signalman No. 5, he should be compensated for the relief time worked by other **employees** at the punitive rate he would have drawn if **allowed** to do this relief work **to** which he should have been entitled.

(b) Therefore we claim Mr. Persichetti should be paid the difference between punitive time **and** straight time for 8 hours each of the days of December 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, and 22, 1969: and punitive time for December 9, 10, 16, 17, for 3 hours **each** day for relief work missed, in addition to **any** other **compensation** which he may have received for this period.

(General Chairman's File: KEP-12-29-69. Carrier's File: 018.1)

OPINION OF BOARD: On November 25, 1969 there were four signalmen employed by Carrier in the following positions:

Lead Signalmen #1 7 A.M. to 3:30 P.M.; rest days Sat. and Sun.  
Signalman #3 3:30 P.M. to Midnight; rest days Mon. and Tues.  
Signalman #5 7A.M. to 3:30 P.M.; rest days Sat. and Sun.  
Relief Signalman #4 Relieved Job #1 Sat. and Sun.  
Relieved Job #3 Mon. and Tues.  
Tag end day Friday 7 A.M. to 3:30 P.M.  
Rest days Wed. and Thurs.

Claimant was assigned as Signalman #5 and paid \$3.9055 per hour. In order to provide twenty-four hour a day coverage during the Christmas mail rush, and in accordance with past practice, Carrier t-e-arranged all the schedules by a series of Bulletins. On November 25, 1969 Bulletin No. 1 **advertised** for bids for Signalman - Temporary and for Signalman #4 - Temporary, both positions to be discontinued at close of shift December 22, 1969. The incumbent Lead Signalman was

the successful bidder for Signalman - Temporary and was assigned to that position as of December 6, 1969, leaving a temporary **vacancy** in his position. Claimant was ~~the~~ successful bidder for Signalman **#4** - Temporary. **Bulletin #3**, dated December **1**, 1969 advertised for bids for the position of Lead Signalmen **#1** - Temporary. **Bulletin #4** dated December 5, 1969 indicated that there were no bids for Lead Signalman - Temporary that G. Miller exercised his seniority rights by displacing Claimant as Signalman **#4** - Temporary; and that Claimant was assigned to the position of Lead Signalman **#1** - Temporary all effective December **6, 1969**. All the temporary assignments were to be discontinued after December 22, 1969.

Petitioner alleges that the position assignments were made by Carrier in order to avoid payment of overtime in December 1969 (**specifically** for December 9, 10, **16** and 17). Violations of Rules 20 and 63 are alleged. Tlio Organization contends that Rule 63 was violated when Claimant was arbitrarily assigned to a position with a different title but with the identical work he had performed previously. Rule 63 states:

"Established positions shall not be discontinued and new ones created under a different title covering relatively the **same class** of work for the purpose of reducing the rate of pay or evading the application of rules in this agreement."

The record indicates that the only changes from Claimant's previous **assignment** was an increase in his rate of pay to \$3.9758 per hour (**56¢** per day) and a reduction of his work day by one-half hour. We find no violation of Rule 63 ~~per se~~; we shall examine the question of the 32 hours of overtime claimed by Petitioner.

Rule 20 reads:

"(a) Except in emergency, an **employee** will not be changed from his assigned hours or from one shift to another. When so **changed**, he will be paid as if working on his regular assigned hours in addition to payments accruing on the new assigned hours or changed shift. Where **employees** temporarily exchange shifts for their own convenience, no additional compensation will be paid, except,

(b) That the incumbent of positions of signalmen will be used to relieve **all employees** for vacations, Leave of absence, sickness, or when they lay off of their own accord, on which reliefs he will assume the hours, duties, and rate of pay of the regular **employee**, except,

(c) For the first five days of such relief he will be paid at the overtime rate for **all** hours worked outside of his own assigned hours, except when relieving for vacations, leave of absence or when the employee lays off of his own accord.

"(d) In each succeeding week he will be paid at the pro rata rate for the assigned **hours** of the position being relieved.

(e) Under the application of this rule the signalmen will be paid for not less than 40 hours in each week, unless he lays off of his **own** accord,

(f) Examples:

(1) The **incumbent of** Signalman Position No. 7 when relieving Signalman Position **No. 3** (second trick maintainer). He will not work his assigned hours and will **work** the assigned hours of *Position No. 3* and be paid at the overtime rate for the first 5 days except for vacations, leave of absence, **or** laying off of their **own** accord, then at the straight **time rate** for the duration of such period.

(2) The incumbent of Signalman **Position** No. 7 when relieving ~~the~~ incumbent of Signalman Position No. 4 (Rest Day **Reliefman**) **will** he paid on the **overtime** rate for the first Monday and **Tuesday** (on the second trick) and the first **Saturday** and Sunday, **except** for vacations, leave of absence, **or** laying off of **their own** accord, and **then** at the straight time **rate** for all succeeding days.

(3) In the event the incumbent of Signalman Position **No. 7** and the incumbent of Signalman Position No. 4 (Rest Day Relief Man) are absent then the incumbent of **Signalman** Position **No. 6** shall **make** the reliefs in Item 2.

(4) In ~~the~~ event the incumbent of Signalman Positions No. 4, 6, and 7 are **absent** then ~~the~~ incumbent of **Signalman** Position **No. 5** shall **make** the reliefs referred to in Item 2.

(g) Rest day **relief employees** will assume the hours, duties and rates of pay of employees they are assigned to relieve.

(h) In the event that any of the signalmen positions referred to in the **above** examples are **reduced** or increased the principle as shown in the **above examples** will be applicable.

**Note:** Nothing in this agreement is to be construed to the effect that the company must maintain any position if it is not needed."

The Organization also relies on a letter of understanding between the parties, dated April 7, 1960 which modifies Rule 20. The pertinent portions of that understanding are:

"It was **agreed** in conference date that the following **would govern** the application of Rule 20 in making relief:

Positions 5, 6, and 7 would be used in reverse order to make relief. If necessary to use positions 1-4 inc. for **relief paragraph** (a) of Rule 20 would apply to positions 1-4 inc. only .....

**Further** the Organization cites Award 15392 in support of its position. In that award, the facts are substantially different than in this matter. Also, the admitted violation of Rule 20 (f) (4) is not applicable since in this case there were no Positions 6 and 7 and the occupant of Position 4 was present.

A careful examination of **the** record **reveals** no evidence in support of the claimed overtime, **merely** the assertion of Claimant. The provisions of Rule 20 and the **letter** of understanding relating to that Rule do not dictate the assignment of rest day relief **work** to Position #5. The third shift relief work performed on the rest days would normally be handled by the regularly assigned third shift signalman and the assigned **relief** man.

In Award 18351, under somewhat different circumstances, we held that "There is no rule in the agreement which gives the Carrier the right to compel an employee to accept a position advertised for bids. Rule 53 implies that an **employee** may decline a promotion." In this case however, Rule 19 has the opposite implication:

"When an employee is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate. . . ."

The Organization contends that the Carrier attempted to avoid the payment of overtime by juggling its assignments during the Christmas holiday period. This Board **has** long held that the **management** must retain its prerogatives unless limited by the Agreement or law (See Awards 11793, 15537, 15406, 16851 and many others). These rights include the **right** to **change work** assignments or schedules to effect **economics** (including saving over-time) as long as these changes are not prohibited by the contract.

We find no Agreement violation in the **case** before us.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A WI: R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E. H. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1973.