

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27712  
Docket No. SG-27021  
89-3-86-3-60

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Railroad Signalmen  
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the National Rail Passenger Corporation (AMTRAK).

(a) Claim that the Carrier violated the Agreement, Article 2, Section 17 Letter of Understanding dated August 12, 1982, signed by G. F. Daniels, Vice President Labor Relations and R. T. Bates, President of the Brotherhood of Railroad Signalmen.

When on November 2, 1984, the Carrier utilized Section 4(B) of the May 7, 1976 Implementing Agreement to force myself from my regular awarded position of Signalman in Gang K 112 to the vacant 3rd Trick Trouble Truck Gang K 012 for which no qualified bids were received.

(b) Carrier should now be required to pay Claimant P. S. Santoro 35-8 hour days account of his actually working this position from November 2 to December 19, 1984, a total of 35 days. Carrier File: NEC-BRS-SD-207"

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The basis of the claim is the August 12, 1982 Letter of Understanding as it related to Article 2, Section 17. The Letter reads as follows:

"This Letter of Understanding refers to negotiation of the August 12, 1982, Agreement and will become effective upon our signing of that Agreement.

In our negotiations concerning 'CHANGING SHIFTS', it was agreed to revise Northern District Rule 24

and Article 2, Section 17 of the Southern District Agreement to read as follows:

'An employee changed by direction of management from his regular position to another shift shall be paid at the time and one-half rate for work performed until returned to his regular position.

Relief assignments consisting of different shifts will be kept to a minimum consistent with creating regular relief jobs and avoiding unnecessary travel for relief men. Shift changes included in such regular relief assignments, the exercise of seniority by bid or displacement or when shifts are temporarily exchanged at the request of the employees involved, shall not be subject to overtime pay provided for in the preceding paragraph.'

Please indicate your concurrence by signing in the space provided below."

The pertinent aspect of Article IV-B of the Implementing Agreement, which is referenced in the statement of claim, is a July 12, 1984 Letter of Understanding. It states:

"This letter has reference to the several discussions, between the Organization and Carrier regarding the filling of Maintainer vacancies for which no bids have been received.

It is agreed that Section IV. B. of the May 7, 1976 Implementing Agreement is modified by the addition of a paragraph 7. as below:

'7. In the event a maintainer position cannot be filled in accordance with the previous paragraphs, all employees considered non-qualified, who submitted an application for such position, will be given a qualification test and the senior employee qualifying will be assigned the position. If the position still cannot be filled, the most junior employee in the class holding an advertised Signaller's position, who has previously been qualified and worked an advertised Maintainer position shall be assigned to the position.

Positions filled by assignment under the above provision shall continue to be advertised as a vacancy in accordance with agreement provisions until filled by a qualified employee. When the position being advertised under this provision is filled by another qualified employee, the employee who was assigned shall return to his former position if available to him. An employee whose position has been abolished or permanently filled by a senior employee while assigned in accordance with this provision shall be entitled to a displacement in accordance with Section IV.C.1. and 2. of the May 7, 1976 Implementing Agreement as modified August 12, 1982.

The Local Chairman and Assistant Division Engineer C & S/ET shall meet upon request of the Local Chairman for the purpose of relieving an employee assigned more than forty-five (45) days to a position in accordance with the foregoing by the coincidental assignment of the next senior qualified employee not then filling a maintainer or higher rated position."

The basic question presented here is whether an employee is entitled to time and one-half (under the August 12, 1982 Letter of Understanding regarding Article 2, Section 17) when a change of shifts is effectuated pursuant to the July 12, 1984 Letter of Understanding (which was negotiated to address vacancies for which no bids were received).

The answer to the question is no. This is for several reasons. First, the July 12, 1984 letter is viewed as an exception to Article 2, Section 17. This is because the July 12, 1984 letter clearly gave the Carrier the right to force, assign on the basis of seniority, employees to certain unfilled vacancies. If this right was to be restricted by a penalty payment it is reasonable to expect that such a penalty would have been clearly expressed in the body of the July 12, 1984 letter.

The second reason Article 2, Section 17 does not apply is that it was not the Carrier that caused the Claimant to change shifts; it was the operation of his seniority in conjunction with the July 12, 1984 letter. Other Boards have been faced with similar questions before and held that when an employee is moved from one shift to another due to the operation of seniority shift change penalties do not apply. It was stated in Second Division Award 9709 (which involved a force assignment due to no bids being received):

"A review of the record and in particular the numerous cases cited by both parties reveals a distinct divergence in the Board's thinking on issues involving change of shift rules.

In this case, greater weight must be given to the cases finding that a change of shift that occurs as the result of an exercise of seniority under circumstances similar to these is not covered by rules such as Rule 91. Under the individual facts and circumstances of this case, the greater weight must be given to this line of thought because of a previous rule which is similar if not identical to Rule 91 was so interpreted.

Other awards that have held in a similar vein view such rules as protecting employees from the employer's indiscriminate changing of shifts rather than those caused by exercising seniority. Award 7251 citing 6344 adequately expresses this view:

'It is the view of the Board in this case that it was the Claimant's exercise of his seniority that resulted in the change of his shift and not a change in shift that necessitated his exercising his seniority. The Board recognized that divergent views have been expressed by numerous Awards of this Board and has carefully examined those opposing Awards cited by the parties. This examination leads us to support the Awards cited by the Carrier and refers the parties to Award No. 6344, Second Division, in particular, as it relates to a dispute involving the identical Rule at issue here and a Claimant who was displaced through the exercise of seniority by a senior employee and thereby exercising his seniority on a position on a different shift. That Award sets forth, in simple terms, the principle that states:

The purpose of this rule (Rule 13, which is Rule 11 in the subject case) as interpreted in prior awards is to penalize Carriers when they indiscriminately change shift assignments of employees. The overtime rate penalty, however, does not apply when employees are exercising seniority or changing shifts for their benefit...."  
(Also see Awards 6279, 6119, 5409, 5045, 4277, 4279 and many others.)

We do not find that the Claimant's change in shift assignment was the result of indiscriminate action by the Carrier or that the Agreement was violated.'"

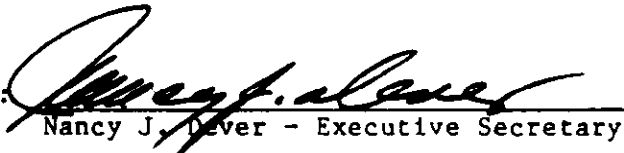
In view of the foregoing, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of February 1989.