

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31242
Docket No. SG-31758
95-3-94-3-27

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"CASE NO. 1

Claim on behalf of L.F. Bass:

A. Carrier violated the current Signalmen's Agreement, particularly Appendix 'M' when it failed to obtain the agreement of the General Chairman and assigned improper work days of Monday through Thursday with work hours of 6:30 a.m. to 5:30 p.m. to the Claimant's position.

B. Carrier should now be required to compensate Claimant at the time and one half rate for all service exceeding eight hours at the straight time rate for each Friday, beginning July 21, 1992, and continuing until the position is returned to a five day per week.

CASE NO. 2

Claim on behalf of E.W. Watkins:

A. Carrier violated the Signalmen's Agreement, particularly Appendix 'M' when it failed to obtain the agreement of the General Chairman and assigned improper work days of Monday through Thursday with work hours of 6:30 AM to 5:30 PM to the Claimant's position.

B. Carrier should now be required to compensate the Claimant at the time and one half rate for all service exceeding eight hours Monday through Thursday and eight hours at the straight time rate for each Friday beginning July 21, 1992, and continuing until the position is returned to a five day per week schedule."

FINDINGS:

The Third 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.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization contends that the Carrier violated Appendix M when it assigned Claimant Bass, Signal Maintainer, and Claimant Watkins, Assistant Inspector, to positions that had the hours of 6:30 A.M. to 3:30 P.M., Monday through Thursday. The establishment of a work week of four ten hour days without the concurrence of the General Chairman was a breach of Appendix "M". The Organization added that the positions were not signal gang positions which precluded the assignment of the four ten hour day schedule. The Organization stated the claim was a continuing one.

The record indicates that the positions held by the Claimants were first advertised as new positions on March 25, 1992 and were awarded to other employees, effective April 6, 1992. Claimant Bass displaced to the Maintainer position, effective April 29, 1992. Mr. Bass then bid and was awarded the Assistant Inspector position, effective June 16, 1992. Claimant Watkins displaced Claimant Bass from the Assistant Inspector position effective July 21, 1992. At this time Claimant Bass displaced back to the maintainer position. On August 31, 1992, the Organization filed separate claims on behalf of these two Claimants.

The Organization took issue with the Carrier's contention that the claims were barred because they were not filed within 60 days from the time the assignments were initially posted. The Organization asserted that the violations of Appendix "M" were continuing violations.

The Carrier contended that there was no violation of Appendix "M" because the two Claimants bid and displaced for these jobs and thereby no concurrence of the General Chairman was necessary. The Organization asserted that Appendix "M" granted an exception only to signal gangs and the Carrier is giving a tortured interpretation to the term signal gangs. The Organization states the Appendix does not define "signal gang." In the industry a signal gang consists of a Foreman, or an Assistant Foreman or a Lead Signaller and one or more Signalmen or Helpers. The Organization adds there is no evidence in the record to show that an Assistant Foreman and Maintainer have ever been considered a signal gang and therefore should not be so considered for the purpose of this claim.

The Carrier stressed that if the Board chose to pass over its objections, procedural and merit, the claims still were not compensable because the positions in question were clearly advertised that they were subject to a four day week and the Claimants displaced to these positions knowing full well their schedule. The Carrier adds the Claimants suffered no monetary loss since they only worked 40 hours per week and were compensated for 40 hours per week.

The Board finds no valid basis to sustain the claim in view of the fact that the Claimants voluntarily assumed these four day work week schedules. The jobs were initially posted on March 25, 1992. Claimant Bass displaced the incumbent on April 29, 1992. He then bid and was awarded the Assistant Inspector job on June 16, 1992. Claimant Watkins displaced Mr. Bass from this position on July 21, 1992.

On these facts, the Board finds that the Claimants voluntarily sought the jobs which had a work week schedule they were now protesting. The Claimants voluntarily assumed the risks and alleged disadvantage of the jobs in question and may not now be heard to protest or object to the work schedules of these jobs. They voluntarily agreed to work under the known conditions of the job. The Board finds the actions of the Claimants particularly striking, since they initially displaced the then incumbents of the jobs in question.

The Board finds that it is not necessary to reach the other matters raised in these claims.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.