

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32000
Docket No. SG-31079
97-3-93-3-36**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Louisville and
(Nashville Railroad Company)**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville & Nashville Railroad:

Claim on behalf of M. S. Anderson for four hours at the straight time rate, and on behalf of L. Burnham and A. Y. Fuller for payment of four hours at the overtime rate, for each day worked by Mr. Anderson on the third shift position of Signal Maintainer at Tilford Yard between September 4, 1991 and October 1, 1991, account Carrier violated the current Signalmen's Agreement, particularly Rules 8, 17, 27, 29 and 31, when it transferred Mr. Anderson to a different shift and failed to properly compensate him at the overtime rate, and failed to assign Mr. Burnham and Mr. Fuller to fill this position, denying them the opportunity to perform the work. Carrier's File No. 15 (92-13). General Chairman's File No. 92-208-01. BRS File Case No. 8952-L&N."

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 involved herein.

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

Signal Maintainers A. Fuller, L. Burnham and M. Anderson (Claimants) were assigned at Tilford Yard in Atlanta, Georgia, with regular assigned first shift hours of 7:30 A.M. to 3:30 P.M., Monday through Friday.

In late August 1991, Carrier advertised a vacant Signal Maintainer position, headquartered at Tilford Yard, with hours of 11:30 P.M. to 7:30 A.M. As senior bidder, Claimant Anderson was to be awarded the position. However, Local Chairman Warner protested that not all of the "appropriate" employees had seen the bulletin, and requested that the bulletin be re-advertised, to which Carrier acquiesced.

From September 4 through October 1, 1991, pending the outcome of the rebulletin, Carrier assigned Claimant Anderson to fill the vacant position. Thus, Claimant did not work his regular 7:30 A.M. to 3:30 P.M. shift during this period of time. However, Carrier paid him the straight time rate of pay for covering the third shift assignment.

On November 1, 1991, the Organization initiated a claim contending that Carrier had violated Agreement Rules 8, 17, 27, 29 and 31, when it "changed Claimant Anderson's assignment to the third shift position and failed to compensate him at the overtime rate."

The Organization paradoxically contended that Claimant Anderson, junior to Claimants Fuller and Burnham, should not have been called to cover the third shift assignment pending the rebulletin. Rather, the Organization insists that Claimants Fuller and Burnham should have been so utilized, at the overtime rate. In that connection, according to the Organization, Carrier has for several years allowed the senior assigned employees the opportunity to cover a vacancy by reporting four hours early or remaining four hours past their regular quitting time.

Thus, in addition to the differential compensation sought for Claimant Anderson, the Organization also requested payment to Claimants Fuller and Burnham "equal to the total time Claimant Anderson was assigned to the position."

Carrier reiterated its denial maintaining that:

"Your claim is not that the senior Signal Maintainer be given the opportunity to work the overtime in question, but rather that a Lead Signal Maintainer and a Signal Maintainer (Fuller and Burhnam) share the work in question. Inasmuch as there is no provision for such an arrangement, that portion of your claim is invalid."

Further efforts to resolve this dispute were to no avail. Therefore, the issue is now before this Board for adjudication.

Rule 27 states:

"Except in emergency, an employee will not be changed from his assigned position or from one shift to another. If changed from one position to another within the hours of his regular assignment, he shall be paid at the straight time rate and in accordance with the provisions of this agreement for such hours but shall not be paid for time not worked on his regular bulletined assignment. If changed from one shift to another he shall be paid the overtime rate and in accordance with provisions of this agreement until returned to his regular shift but shall not be paid for time not worked on his regular bulletined assignment." (Emphasis added).

The language of the quoted Rule is quite clear and unambiguous. Claimant Anderson ordinarily worked from 7:30 A.M. to 3:30 P.M. and Carrier assigned him to the third shift at Tilford Yard. Therefore, Claimant is entitled to the overtime rate of pay, and Carrier is directed to compensate him accordingly.

There is no probative evidence presented on this record, nor is there an Agreement Rule which supports the Organization's contention that Claimants Fuller and Burnham should be compensated as a result of Claimant Anderson temporarily filling the third shift. Therefore, that portion of the claim is denied.

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 Third Division**

Dated at Chicago, Illinois, this 6th day of May 1997.