

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35866
Docket No. MS-34457
01-3-98-3-83**

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

**(Terry W. Maher and John W. Miller
PARTIES TO DISPUTE: (
(New Jersey Transit Rail Operations, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of J.W. Miller and T. W. Maher to be reverted back to their original tour of duty, account Carrier violated the current Signalmen’s Agreement, particularly rule 4-A-3(b) and rule 15(a), when it improperly changed the claimants (sic) tour of duty on February 21, 1997. Carrier’s File No. BRS11-2-97C. General Chairman’s File No. RM2948-84-0497.”

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.

On February 13, 1997, the Carrier gave the Claimants, one of whom is the Local Chairman, notice that their tour of duty would be changed, effective February 21, 1997, from 6:30 A.M. to 2:30 P.M. to 7:30 A.M. to 3:30 P.M. No additional notice however was sent to the Local Chairman in his capacity as such until the error was discovered at which time a copy of the notice was telefaxed to him on February 24, 1997.

The Claimants argue that the Carrier violated Rule 4-A-3(b), which requires that the starting time of an employee may not be changed “without first giving the employee affected five calendar days notice with a copy to the Local Chairman.” More particularly, they argue that the Rule requires that the Carrier give the Local Chairman five days notice and that the Carrier failed to do so, not giving him notice until February 24, 1997.

We disagree. A simple reading of the language in question shows that the qualifying language setting forth the five days notice applies to the notice to the affected employee and not the Local Chairman. If the parties intended that the time period applied to both, they would have instead agreed to language such as, for example, “without first giving the employee affected and the Local Chairman five calendar days notice.” However, they did not do so. Moreover, assuming arguendo that the Claimants are correct in their assertion, the facts of this case show that one of the “affected employees” was also the Local Chairman. Thus, he received notice on February 13, 1997 and the Carrier’s obligation was met. Finally, we note that the Claimants also asserted a Rule 15 violation. However, there is no evidence in the record nor any argument as to the nature of such an alleged violation.

AWARD

Claim denied.

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 18th day of December, 2001.