

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36885
Docket No. SG-36896
04-3-01-3-451

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

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

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (NRPC-S):

Claim on behalf of L. D. Frykman for nine day's pay at the current Signalmen's rate of pay. Account Carrier violated the current Signalmen's Agreement, particularly Rules 13, 14 and 22 when on July 24 through 28, 2000, and again from July 31 through August 3, 2000, Carrier initiated a temporary shift change and refused to allow Claimant to exercise displacement rights. Carrier's File No. NEC-BRS(S)-SD-908. General Chairman's File No. JY 321055-651000. BRS File Case No. 11718-NRPC-S."

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.

This claim protests the Carrier's action in changing the shift of Gangs E092 and E496 and refusing to allow the Claimant, a Signaller on Gang E496, to exercise his displacement rights off of his gang. It directly raises the issue of whether an employee is entitled to exercise displacement rights under Rules 13, 14 and 22 during a temporary shift change instituted by management under the provisions of Rule 27.

The record reflects that the Carrier notified Gangs E092 and E496 that in order to facilitate completion of the Carrol Interlocking Rehabilitation Project, their shift would be changed to 8:00 P.M. - 8:00 A.M. from July 21 to August 3, 2000, at which time they would return to their original 6:00 A.M. - 2:30 P.M. shift pursuant to Rule 27. The Carrier did not permit any of the gang members to exercise their displacement rights off of the gangs during this period of shift change and paid them the time and one-half penalty rate specified in Rule 27. The Claimant herein seeks additional pay associated with his regular shift for the nine days he worked the night shift.

The pertinent Agreement Rules which must be interpreted by the Board to resolve the issue herein are as follows:

"RULE 13 - EXERCISE OF SENIORITY

(b) An employee whose position has been abolished or who has been displaced by a senior employee or who is entitled to exercise seniority under Rule 14 shall have the right to displace within ten (10) calendar days in any seniority class in which he holds seniority. . . .

RULE 14 - CHANGE IN POSITION

An employee may elect to retain his position or within ten (10) calendar days from the date of written notification exercise

displacement rights if changes occur in any of the following conditions of his position:

* * *

(d) Assigned tour of duty, except due to Daylight Savings Time.

RULE 22 - STARTING TIME HOURS

(c) The starting time of employees shall not be changed without first giving the employees affected five (5) calendar days notice with copy to Local Chairman. Changes in starting times made under the provisions of this Rule shall not require readvertisement; however, employees whose starting times are changed more than one (1) hour may elect to exercise their seniority to other positions in accordance with Rule 14.

RULE 27 - CHANGING SHIFTS

An employee changed by the 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."

The Organization argues that the clear language of Rules 13(b) 14(d) and 22(c) permit an employee to elect to exercise seniority to other positions if a change in starting time of more than one hour occurs, as was the case when the Carrier changed the starting time of Gangs E092 and E496 from 6:00 A.M. - 2:30 P.M. to 8:00 P.M. - 8:00 A.M., not a recognized shift on the Carrier's property. The Organization asserts that the Carrier's direction constituted a change of the Claimant's assigned tour of duty under Rule 14, permitting displacement rights under Rule 13(b). While the Organization does not challenge the Carrier's right to change shifts under Rule 27, it asserts that such provision does not override other Agreement Rules, and that employees may either elect to retain their position and receive penalty pay or displace onto another position. The Organization posits that the Carrier failed to prove its affirmative defense that permitting displacement when a shift change is made would begin a chain of displacements disruptive of the

operations, relying on Second Division Awards 5484 and 6892. The Organization contends that by not permitting the Claimant to exercise his displacement rights on July 21, 2000 and requiring him to work the night shift, the Carrier violated Rules 13, 14 and 22 and the Claimant forfeited nine days' pay during the period of the temporary shift change, requiring a monetary remedy.

The Carrier argues that it properly applied Rule 27 in this case when it temporarily assigned all employees on Gangs E092 and E496 to work the night shift to facilitate completion of the Carrol Interlocking Rehabilitation Project and paid them time and one-half as penalty for any inconvenience. The Carrier contends that because Rule 27 has no provision for the exercise of displacement rights by employees when management makes this temporary shift change, none exists, and if the Board were to find that Rules 13, 14 and 22 are applicable in such situation it would strip Rule 27 of any meaning and effectively write it out of the Agreement, which the Board has no authority to do.

The Carrier asserts that Rules 13, 14 and 22 are inapplicable where management directs employees to work another shift for a temporary period of time under Rule 27, as it did in this case, because none of the conditions of the Claimant's regular position were changed. The Carrier contends that Rule 27 is intended to afford it the ability to rearrange its work force to address operational conditions, and posits that if employees were granted displacement rights in such situations, not only would the Carrier be prevented from addressing the operational need, but it would begin a chain of displacements that would further disrupt the operation, and would effectively block the Carrier's ability to direct employees to temporarily change shifts. The Carrier relies upon the rule of contract construction that where alternative constructions are possible, the one leading to a reasonable or sensible result should be preferred over the one leading to an absurd or ridiculous result, citing First Division Award 19929; Third Division Award 15011; Fourth Division Award 1224. Finally, the Carrier argues that because it properly compensated the Claimant at the time and one-half rate for the nine days he worked another shift, there is no Agreement support for him receiving a windfall payment for the same period of time.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of Rules 13, 14 and 22 in this case.

The Board is mindful of the established tenets of contract interpretation which include that the contract must be read as a whole, it should be presumed that the parties intended each provision to have some meaning, and that nonsensical results are to be avoided. See, e.g. Third Division Award 15011. In applying these principles to determine whether an employee has displacement rights during a temporary shift change instituted by the Carrier under Rule 27 of this Agreement, the Board agrees that the underlying premise of the displacement rights contained in Rules 14 and 22(c) is the occurrence of some change to the conditions of an employee's permanent position, e.g. the assigned tour of duty or starting time hours, which, absent the ability to exercise seniority, would require the employee to work in an ascertainably different position at the straight time rate of pay.

Rule 14 gives the employee the option of electing either to remain in the changed position or exercise displacement rights to a different position in the event that one of five specified changes occurs, one of which is a change in the assigned tour of duty. Rule 13(a) lists five situations where displacement rights may be exercised including the abolition of a position or removal from a position due to displacement or otherwise, neither of which occurred in this case. Rule 13(b) sets forth the time limits for exercising such seniority after displacement from, or abolishment of, a position or when displacement rights exist under the changed conditions contained in Rule 14. Rule 22, which deals with guidelines for the establishment of starting time hours, provides in paragraph (c) that changes in the starting time of a position (for which five calendar day notice is required) does not result in the need to readvertise the position, but if such change is more than one hour, grants the employee the right to elect to exercise seniority to displace onto other positions.

The language of the first paragraph of Rule 27 permits management to change an employee "from his regular position to another shift," noting that in such circumstances the parties agreed that the employee would receive penalty pay until "returned to his regular position." It clearly states that the shift change directed by management is not considered a part of the employee's regular position. Thus, the parties contemplated that a shift change instituted by the Carrier under Rule 27 would be temporary in nature and that the inconvenience to employees caused thereby would be dealt with by additional compensation in the form of penalty pay for its duration. The Board is in agreement with the Carrier that, absent specific

language in the provision, the parties did not intend the Carrier's right to temporarily change shift hours to deal with operational needs negotiated in Rule 27 to set in motion a potential series of displacements directly impacting upon efficiency considerations giving rise to the need for such change. By noting specifically that the temporary shift change was not to be considered a change in the employee's regular position, the foundation upon which displacement rights are based, and by negotiating the payment of compensation to affected employees at the penalty rate for any inconvenience that might occur, the parties created a special procedure in Rule 27 not intended to set in motion employee displacement rights contained in Rules 13, 14 and 22.

Our finding that an employee is not entitled to exercise displacement rights under Rules 13, 14 and 22 during a temporary shift change instituted by management under the provisions of Rule 27 disposes of the basis underlying this claim for monetary relief. We note that the Claimant received time and one-half pay for each of the nine days he is herein seeking additional monetary compensation.

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 25th day of February 2004.