

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39318
Docket No. SG-38877
NRAB-00003-050315
(05-3-315)

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Railroad
(Corporation

STATEMENT OF CLAIM:

“Grievance on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp:

Claim on behalf of all signal employees for Carrier to comply with the terms of the Agreement and to rescind Special Instruction #26, dated April 1, 2004, account Carrier violated the current Signalmen’s Agreement, particularly Rule 33, when it unilaterally issued a Special Instruction that limits the times that an employee can exercise a seniority displacement, which is in conflict with the Collective Bargaining Agreement. Carrier’s File No. 11-24-439. General Chairman’s File No. 16-S-04. BRS File Case No. 13314-NIRC.”

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.

The Carrier states that for the Board to even take the claim under consideration would be tantamount to micromanagement of its managerial prerogatives, a role which it contends the Board has long held in prior decisions it will not undertake.

While this Carrier argument has merit as would concern an interference with the general operation of the railroad, it does not seem to the Board that it has merit as concerns the nature of the dispute at issue. Here, the Board must take into account that the claim as filed goes to a question as to whether the Carrier violated Rule 33 of the Agreement with unilateral issuance of instructions covering the manner in which seniority displacements are to be submitted or exercised. Certainly, the Organization has an oversight right to protest if it believes a Carrier action violates terms of the Agreement.

Rule 33, "Exercising Displacement Rights," reads as follows:

"When, pursuant to Rule 31, employees are notified that they are to be laid off, their positions are to be abolished, or they are to be displaced, and they desire to exercise displacement rights or are required to do so by this agreement, except as provided in Rules 25 and 31, they must in turn notify the employee they intend to displace, the Division Engineer and the General Chairman jointly in writing as soon as possible, but not later than five (5) calendar days after receipt of notice that their position is to be abolished or they are to be displaced."

The grievance arises out of an April 1, 2004 bulletin notice in which the Carrier set forth the manner that would govern an exercise of displacement rights under Rule 33. Basically, the notice stated that it was the responsibility of the employee to contact the supervisor of its wire shop to find out where employees having less seniority are currently working; an employee must fill out and sign a Carrier approved bump notice form and give it to the employee being displaced; copy of the bump notice must be submitted to a designated staff member at a home district office; bump notices

would be accepted during regular office hours only, i.e., Monday through Friday, 7:30 A.M. to 3:30 P.M.; and, a bump not handled in accordance with this procedure would not be accepted.

Before undertaking to tackle whether there is merit to the alleged Rule violation, the Board will first note that it does not concur with the Carrier's argument that because it pulled down its initial bulletin of April 1, 2004 (Engineer Department Special Instruction No. 26) in a recognition that certain terms of it did, in fact, violate Rule 33, as claimed, that subsequent issuance of a revised Instruction Notice No. 26 on May 12, 2004, made the Organization's claim moot.

In study of the record it does not seem to the Board that the Carrier was acting in disregard of what it believed to be both its and an employee group interest in trying to handle seniority displacements or bumps in a more orderly manner during the more usual business hours of a five-day workweek, notwithstanding it operates its services seven days per week. At the same time, it seems evident to the Board that the Carrier is precluded from doing so in a unilateral manner because certain of its actions appear to conflict with the terms of Rule 33. For example, although the revised bulletin does not include certain of the contested provisions of the initial bulletin, it does continue to place certain obligations upon an employee that are not specifically set forth in Rule 33 and continues to provide that displacement notices will be accepted during "regular office hours" Monday through Friday, 7:30 A.M. to 3:30 P.M., whereas no such time restriction is stated in Rule 33.

In the light of the above considerations, it will be the decision of the Board that the dispute be remanded to the parties for joint discussion, handling and disposition.

AWARD

Claim remanded in accordance with the Findings.

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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 29th day of September 2008.