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**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 40518  
Docket No. SG-38591  
10-3-NRAB-00003-040596  
(04-3-596)**

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

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(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.:**

**Claim on behalf of MidAtlantic Division Construction Gang E-092, for compensation at the straight time rate of their regularly assigned hours between May 18, 2003, and June 30, 2003, account Carrier violated the current Signalmen’s Agreement, particularly Rule 41, when the members of Gang E-092 were not compensated for their regularly assigned hours between May 18, 2003, and June 30, 2003, after being directed by management to work another shift under Rule 27. Carrier’s File No. NEC-BRS(S)-SD-1023. General Chairman’s File No. JY32101060-650311. BRS File Case No. 13019-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.

The Organization filed the claim on July 16, 2003 on behalf of Gang E-092 that had a regular assignment of 6:00 A.M. to 4:00 P.M., Monday thru Thursday. Under Rule 27 (Changing Shifts) the Carrier changed their assignment and, thereafter, Gang E-092 worked from 10:00 P.M. to 6:00 A.M., Sunday thru Thursday. There is no dispute that the members of Gang E-092 were compensated at the time and one-half rate of pay while working the new assignment. What the Organization argues is that the members of the Gang were entitled to compensation for their advertised tour of duty and were not compensated for the regular assignment in violation of Rule 41 when, from May 18, until June 30, 2003, they were directed to the new shift.

The Organization asserts that the members of Gang E-092 had regular assigned hours - 6:00 A.M. to 4:00 P.M., ten hours per day, four days per week. Under Rule 41 (Hours of Service) which the Organization argues the Carrier violated, the members shifted from and were denied the right to work their regular assigned hours. As such, they were entitled to straight time compensation lost, as per Rule 41 which states:

“The following provisions will apply to any employee who is required by the Carrier to perform service outside of his regularly assigned hours and because of such service is unable to work some or all of his regularly assigned hours because of restrictions contained in the Hours of Service Act, as amended by Public Law 94-348.

(a) Provided the employee fulfills the obligations set forth in subparagraph (b), he will be compensated for his regularly assigned hours at the straight-time rate of pay.”

The Organization argues that the provision, supra, is clear. The members of Gang E-092 were unable to work their regularly assigned hours and under the Hours of Service Act, they “will” be compensated, as per the claim at bar.

The Carrier’s defense of its actions is based on Rule 27, which states:

“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.

Relief assignments consisting of different shifts will be kept to a minimum consistent with creating regular relief jobs and avoiding unnecessary travel for relief men. Shift changes included in such regular relief assignments, the exercise of seniority by bid or displacement or when shifts are temporarily exchanged at the request of the employees involved, shall not be subject to overtime pay provided for in the preceding paragraph.”

The Carrier denies any violation of Rule 41 and asserts on the property that “. . . the Hours of Service Act did not prevent the employees from working their regular positions.” The Carrier’s argument continued to be that the members of Gang E-092 were “removed from their regular positions and assigned to work a different shift under Rule 27,” as properly directed by the Carrier.

The facts of this case indicate that the precipitating action was the Carrier’s shift of hours and days under Rule 27. The record indicates that under Rule 27, the Claimants were to be paid at the time and one-half rate “until returned to his regular position.” There is nothing in this Rule to permit additional compensation. The Organization’s reliance on Rule 41 is misplaced. There is no probative evidence that the Claimants of Gang E-092 were denied the right to work their normal assignment due to the Hours of Service Act. In fact, they were not. The full on-property record indicates that the Carrier removed them from their normal assignment. Rule 27 of the Agreement permits this if properly compensated, as per the Rule.

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The Board has not found other arguments in this dispute decisive. Third Division Awards have visited this issue as it applies to other Rules with the same conclusion. The Carrier's right must be upheld given the negotiated provisions of Rule 27. The conclusions of Third Division Awards 36883 - 36887, as well as Awards 37173 and 37174 are on point. The Board must deny the claim.

**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 15th day of June 2010.