

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40519
Docket No. SG-38592
10-3-NRAB-00003-040597
(04-3-597)

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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.:

Claim on behalf of MidAtlantic Division Construction Gang E-092, for all BRS positions in Gang E-092 be re-advertised, account Carrier violated the current Signalmen’s Agreement, particularly Rule 27, when it changed the assigned days and rest days for C&S Construction Gang E-092 on May 18, 2003, and again on June 30, 2003. Carrier’s File No. NEC-BRS(S)-SD-1022. General Chairman’s File No. JY32101059-650311. BRS File Case No. 13017-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 claim by letter dated July 5, 2003. It alleged that on May 7, effective May 18, and continuing again on June 24, effective June 30, 2003, the Carrier violated Rule 27 when it changed the assigned days and rest days of Gang E-092. Rule 27 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.”

There is no dispute that the members of Gang E-092 were moved from their BRS positions on one shift to another. However, as the Organization argues on the property, it was more than a change in shift as contemplated by Rule 27. Although the Gang was paid time and one-half between May 18 and June 30, 2003, they were not moved from their regular shift to another. Gang E-092's regularly assigned shift worked Monday through Thursday from 6:00 A.M. to 4:00 P.M. The record indicates that the Gang was moved under Rule 27 to work from 10:00 P.M. to 6:00 A.M., Sunday through Thursday from May 18 to June 30, 2003. The Organization argues that Gang E-092 should have been re-advertised.

The Carrier's position on the property is that Rule 27 permits it to re-direct the gang to another shift without abolishment or re-advertisement of the Gang. While the Carrier does note that the Rule “does not contemplate alterations in work weeks and rest days” the members of Gang E-092 were properly compensated at the time and one-half rate pursuant to the Rule. Additionally, the regular assignments of the Gang were not changed. When the project that the Gang was moved to was completed, the Gang members returned to their regular assignments. The Carrier argues that the issue was therefore moot. Certainly, re-advertising was unnecessary.

This record and the Rule, supra, clearly establish a Carrier violation. Not only does the Rule not “contemplate,” it does not permit in any language a change from a regular assignment to new workweeks; hours and rest days - only a shift change. The Board concludes that the Carrier violated Rule 27.

It is not important to our decision that the members of Gang E-092 were paid at the appropriate time and one-half rate of pay. The claim as presented requests no further compensation. What is before the Board is a request that the positions be re-advertised. Technically, this is appropriate, because it is clear that this action by the Carrier should not have occurred.

Under these full circumstances, however, and with the significant passage of time, the Board finds that such remedy would now be unreasonable. The remedy requested would not only penalize the Carrier, but disrupt the Gang from what has been years of orderly changes. While the Claimants were inconvenienced for a few weeks in 2003, the requested penalty is inappropriate at this juncture. The Carrier is on notice that after this Award, similar actions will require a different remedy.

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 15th day of June 2010.