

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23880
Docket Number SG-23049

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Southern Railway System

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway System:

Claim on behalf of Southern Railway Signalman J. R. Scott, headquartered Sheffield Yard, assigned work days Monday through Friday, assigned rest days Saturday and Sunday, assigned working hours 7:00 A.M. to 4:00 P.M.

1. Claim for eight (8) hours straight time for each day he is held off of his permanent assigned job, Monday through Friday, beginning April 5, 1978, and continuing until he is permitted to work his permanent assignment as awarded on Bulletins S-110 and S-113.

2. Claim for eight (8) hours overtime at the time and one-half rate of pay for each Saturday and Sunday he works his assigned rest days. Beginning with the weekend of April 8, and 9, 1978, and continuing until he is permitted to work his regular assignment.

3. Claim for half time in addition to the straight time he is paid for working Monday, Thursday and Friday, that he is required to work the second shift signal maintainers job, and is to continue until he is permitted to go to his permanent assigned job." (Gen. Chmn File: SR-46. Carrier File: SG-339)

OPINION OF BOARD: Claimant, J. R. Scott, at the time this dispute arose, was the incumbent of a second shift maintainer position at the Sheffield Retarder Yard. On two occasions, Bulletin Nos. S-109 and 112, Claimant bid to fill vacancies on the first shift. Each time Claimant was assigned to the vacancy but was nevertheless detained on the second shift.

The Organization's primary contention is that Carrier violated Rule 20c when it failed to transfer Claimant within twenty days after the close of the bid.

Carrier, on the other hand, denies that it violated the Agreement. It asserts that the absence of a qualified applicant to fill the second shift opening that would exist when Claimant moved to the first shift constituted "special circumstances" within the meaning of Rule 20c. As such, Carrier claims that it was warranted in detaining Claimant on the second shift.

Rule 20c states:

"(c) Transfer of successful applicants to new assignments will be arranged for, unless prevented by special circumstances, within twenty (20) days after close of the bulletin. Employees failing to go to new positions within this period, unless prevented by illness, shall take leave of absence, and failing so to do may thereafter place himself only by bidding on other vacancies."

A review of the evidence convinces us that Carrier's action violated the Agreement. Its failure to transfer Claimant within twenty days must be viewed as an abuse of discretion.

Of course, we are mindful that Carrier did attempt to find someone to fill the vacancy on the second shift. Thirty-one new employees were offered the opportunity to bid on the second shift maintainer's position.

However, such an effort does not, in and of itself, establish special circumstances. Since Carrier failed to meet its burden of establishing special circumstances, we are persuaded that some compensation is due Claimant.

Yet, given the facts here, the claimed amount is excessive. We will award Claimant eight (8) hours overtime at the time and one-half rate of pay for each Saturday and Sunday he worked that he would not have worked had he been properly transferred. The other requests for payment are rejected.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

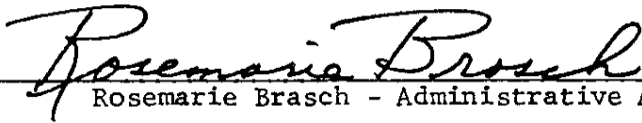
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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By

A handwritten signature in cursive script, reading "Rosemarie Brasch", written over a horizontal line.

Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May, 1982.