

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Indiana Harbor Belt Railroad Company (IHB):

On behalf of Signal Maintainer M. R. Lewman, headquartered at Blue Island Hump Yards, that:

(a) Carrier violated the parties' Signal Agreement, as amended, particularly Rules 4-G-1, 4-A-3(b) and 4-B-4(b) when effective Monday, November 3, 1986, Claimant had his position changed from a third shift position to a first shift position, which resulted in a change of his starting time and assigned rest days during the period November 3 through November 14, 1986.

(b) Carrier should now be required to allow Signal Maintainer M. R. Lewman the difference between his straight time rate of pay of \$13.45 per hour and overtime rate of pay of \$20.175 per hour for the period referred to above, which represents 72 hours X 6.725 or \$484.20." General Chairman's file 86-55-IHB; Carrier file S-87-2.

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The basic facts of this case are set forth as follows. Claimant was initially employed as a Signal Maintainer at Carrier's Blue Island Hump. His assigned hours were 7:00 AM - 3:00 PM with Wednesday and Thursday as his rest days. On October 8, 1986, Carrier advertised a new Signal Maintainer position identified as Position 463 and pursuant to the Schedule Agreement issued Bulletin #18. Position 463 was headquartered in Blue Island with assigned hours of

11:00 PM - 7:00 AM. Sunday and Monday were rest days. On October 27, 1986, Carrier issued Bulletin #18A, wherein it awarded Position 463 to Claimant, effective November 4, 1986. Two (2) days later, on October 29, 1986, it issued Bulletin #18B, designated correction notice, wherein it noted that Bulletin #18A should have read "Awarded to M.R. Lewman effective November 3, 1986 with two (2) weeks of Temporary duty as follows:

Assigned Hours	7:00 AM to 3:00 PM
Rest days	Friday and Saturday
Headquarters	Argo Yard Office"

The purpose of the correction was so that Claimant could familiarize himself with the territory and responsibilities of the night maintainer assignment. For the two (2) weeks period, Claimant performed the duties of the temporary assignment and was then apprized by Bulletin #18C, dated November 12, 1986, that he was to report to his permanent position, (Position 463) effective, November 14, 1986.

The Organization later filed a Claim on December 6, 1986, wherein it charged that Carrier violated Rule 4-G-1 when it (Carrier) changed the shift time of the awarded position. In other words, the Organization asserted that temporarily modifying the shift time of Position 463 was a violation of Rule 4-G-1.

By letter dated January 2, 1987, Carrier denied the Claim, arguing that Claimant acquiesced to the shift change when he elected to retain his position rather than exercise displacement rights in accordance with Rule 2-A-4. It was Carrier's position that it made no change in the shift or other advertised working conditions in Position 463 after the date the position was established and after the date it became Claimant's regular position on the effective date of the Award (November 3, 1986.) In essence, Carrier contended that Rule 4-G-1 has no applicability to situations where a position has not come into existence and where an employee has not occupied the position.

As the Claim progressed, the Organization also asserted that Carrier violated Rules 4-A-3(b) and 4-B-4(b). For ready reference, the Rules cited by parties are reproduced as follows:

"4-G-1. An employee changed by direction of the management from his regular position to another shift be paid at the time and one-half rate for work performed until returned to his regular position.

4-A-3. (b) 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. The starting time shall not be temporarily changed for the purpose of avoiding overtime.

4-B-4. (b) Employees will not be required to suspend work during regular working hours to absorb overtime.

2-A-4. An employee may elect to retain his position or within ten (10) calendar days exercise displacement rights if changes occur in any of the following conditions of his position: (a) Assigned rest day or days; (d) Assigned tour of duty . . ." (Emphasis supplied.)

In considering this case, the rules cited by the parties are clear and readily applicable to specific relevant situations. If an employee for example, is directed by management to work another shift, he is entitled to the compensatory benefits of Rule 4-A-1. Similarly, an employee may elect his alternative options under Rule 2-A-4, if specified changes occur in the conditions of his position.

In the case herein, the defining question is what position did Claimant actually hold on November 3, 1986. Since he was assigned to a temporary assignment, effective that date, he relinquished his Signal Maintainer's position (#465) at Blue Island Hump and thus was not directed by management to work another shift. In essence, he began a new position on November 3, 1986. Since the hours of the new position (#463) were scheduled or advertised by Bulletin #18, to run from 11:00 P.M. to 7:00 A.M., and since there is no record indication that prior newly established positions were first filled by short term temporary assignments, the Board of necessity, must conclude that Rule 4-A-1 was violated when Claimant worked the temporary hours of the new position. It was the new position that he was actually working and not the hours of his former position or another position that he was assigned to work. For these reasons, we must sustain the Claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.