

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim on behalf the General Committee of the Brotherhood of Railroad Signalmen on the Elgin, Joliet and Eastern Railway Company (EJ&E):

(a) Carrier violated the parties' Schedule Agreement, as amended, particularly Rules 54, 56, 62, 64 and 65(a), when on April 11, 1989, EJ&E Chief Engineer K. L. Hay issued job advertising Bulletin Nos. 1588-1589 advertising new positions of Leading Maintainer and Signal Maintainer with assigned hours of service from 12:00 noon to 8:30 p.m. with EJ&E system responsibility.

(b) As a consequence of the above violation, Carrier be required to compensate Kenneth W. Michaels, ID 82902 at his applicable overtime rate of \$21.51 per hour; and Jerald D. Dawson, ID 82642 at his applicable overtime rate of \$21.24 per hour for all hours worked beginning April 24, 1989, forward after 4:00 p.m. in addition to compensation already allowed, due to a loss of earning and work opportunity.

(c) Inasmuch as this is a continuing violation, said monetary claim is to continue until such time as Carrier takes necessary corrective action to comply with violation cited in part (a) above." Carrier file 144-391. G.C. file 89-14-EJE. BRS file Case NO. 7949-EJE.

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.

This Claim arose because the Carrier abolished the two permanent Signalmen positions on Gang 106 on April 11, 1989, held by the two Claimants. On that same date, it advertised two newly created positions (Leading Maintainer and System Signal Maintainer). The Claimants bid for and were awarded the two new positions that had assigned hours from 12:00 Noon to 8:30 P.M. On July 7, 1989, these two positions were abolished. The Claim, therefore, is for loss of overtime for the period from April 24, 1989, when the Claimants were assigned to their jobs, and to July 7, 1989, when the two positions were abolished.

Rule 54 is mainly controlling in this dispute and it reads:

"Starting Time - The starting time of the work period of all employees where one (1) shift is employed, or the first shift where two (2) or more shifts are employed, shall be between the hours of 6:00 A.M. and 8:00 A.M. consistent with the requirements of the service."

On July 19, 1989, the Chief Engineer denied the Claim on the basis that the two positions had been established pursuant to that part of Rule 54 which reads "consistent with the requirements of the service."


Rule 54, as well as Rule 66, "Changing Shifts", clearly recognizes the possibility that more than one shift may be established. The Carrier also has the right to establish positions absent any constraints agreed to by the parties. In this case, there was a clear rationale for establishing the two positions (see Carrier letter of October 19, 1989) and we find that the second shift assigned to the Claimants' positions was proper pursuant to Rule 54 because of "service requirements." The Board also notes that the Carrier's service requirement argument was never substantively rebutted on the property.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.