

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35595
Docket No. SG-35316
01-3-99-3-190**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Long Island Rail Road Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Long Island Rail Road:

Claim on behalf of R.W.Farrell, for 40 hours, W. Rush, for eight hours, and E. Montero and A. Baez, for 24 hours each, all at their respective time and one-half rates and continuing until this dispute is resolved, account Carrier violated the current Signalman’s Agreement, particularly Rules 25 and 42, when it improperly assigned an employee to cover vacant positions on the Signal Control Desk, from September 27, 1997, through October 30, 1997, denying the Claimants the opportunity to perform this work. General Chairman’s File No. SG-29-97. BRS File Case No. 10958-LI.”

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.

This claim filed on November 22, 1997 protests the Carrier's assignment of Signal Maintainer Young on straight time to cover temporary vacancies on the Signal Control Desk resulting from movement created by the processing of bid awards, rather than the Claimants, who hold the position of Foremen, on overtime as a violation of Rules 25 and 42. There is no dispute that the assignment was to the Assistant Foreman position, and that Young had taken and passed the test for the Assistant Foreman position, had bid for it, and was the most senior qualified employee in the lower class.

The Organization argues that Young was ordered to suspend work during his regular working hours in order to absorb overtime that should have accrued to the Claimants in violation of Rule 42, and that seniority within the classification applies to the filling of temporary positions under Rule 25, noting that Young had no Foreman seniority at the time.

The Carrier contends that it properly high-rated Young to the vacant position in accord with prior practice and Rule 27(c) that permits the filling of a vacancy when no bids are received from qualified bidders in the class by using the most senior qualified applicant in the lower class. The Carrier argues that Rule 25 only relates to the award and assignment of a bulletined permanent position, not a temporary vacancy, and that it was permissible under the Agreement to high-rate an employee. The Carrier asserts that Rule 42 has been held to prohibit it from suspending an employee who worked overtime from working his/her regular hours of service in order to absorb the overtime already worked, citing Public Law Board No. 4622, Award 40, and notes that none of the Claimants had their regular working hours suspended. The Carrier contends that it has multiple options when choosing how to cover temporary vacancies including blanking the job and using overtime (the only two the Organization believes are appropriate), as well as using unassigned employees at the straight time rate and high-rating an employee, which it chose to do in this case.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of either Rule 25 or Rule 42. In effect, the Organization is claiming that the Carrier must either blank a temporary vacancy or fill it by assigning overtime work to the most senior employee within the class of the vacancy. It failed to rebut the Carrier's assertion that there has been an accepted practice since at least 1970 of high-rating employees to fill temporary vacancies. Further, the Organization has not shown that the Carrier is prohibited from assigning an employee to cover a temporary vacancy on straight time.

Public Law Board No. 4622, Award 40, clearly rejected the same Rule 42 argument made by the Organization herein. It stated:

“The Organization provides a novel but unconvincing interpretation of Rule 42, Absorbing Overtime. The Organization suggests that, by transferring an employee on straight time, this ‘absorbed’ work and thus prevented the Claimant from undertaking an overtime assignment. This does not fit the conventional meaning of a rule concerning ‘absorbing overtime.’ Rule 42 is intended to prevent the Carrier, for the purpose of avoiding premium pay, from shortening the regularly assigned hours of an employee because the employee is working hours beyond a regular assignment. The Claimant was not prevented from working his regular schedule.”

We adopt the above-rationale and find no merit to the instant 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 24th day of July, 2001.