

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36883
Docket No. SG-36894
04-3-01-3-447

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
(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. (NRPC-S):

Claim on behalf of L. D. Frykman for the right to exercise his seniority rights under the current Signalmen's Agreement dated September 13, 1999. Account Carrier violated the current Signalmen's Agreement, particularly Rules 13, 14 and 58 when on July 21, 2000 Carrier disallowed Claimant's displacement of a junior employee. Carrier's File No. NEC-BRS(S)-SD-910. General Chairman's File No. JY 321054-65900. BRS File Case No. 11716-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.

This is an Unjust Treatment claim that protests the Carrier's action in changing the shift of Gangs E092 and E496 and refusing to allow the Claimant, a Signaller on Gang E496, to exercise his displacement rights off of his gang. The record reflects that the Carrier notified the gangs that pursuant to Rule 27 their shift would be changed to 8:00 P.M. - 8:00 A.M. from July 21 to August 3, 2000, at which time they would return to their original shift of 6:00 A.M. - 2:30 P.M. The Carrier did not permit any of the gang members to exercise their displacement rights off of the gangs during this period of shift change.

The Organization argues that the clear language of Rules 13(b) 14(d) and 22(c) permit an employee to elect to exercise seniority to other positions if a change in starting time of more than one hour occurs, despite the Carrier's right to change shifts under Rule 27. The Organization asserts that it raised the issue of the existence of a past practice by the C&S Department to permit employees the right to displace in these circumstances, a fact not disputed by the Carrier on the property, and that such assertion must be considered an undisputed material fact by the Board, citing Third Division Awards 28459 and 30460. The Organization states that such established practice cannot be changed without agreement of the parties, relying on Third Division Awards 13229, 28214 and 31424. The Organization contends that the Claimant followed the appropriate procedure in alleging Unjust Treatment by the Carrier because the shift change created an undue hardship upon him and his family; the C&S Department initially granted his displacement rights, but the Labor Relations Department overruled such decision. It requests in this claim that the Claimant be permitted to exercise his displacement rights.

The Carrier initially contends that because the clear language of Rule 58, Unjust Treatment, precludes the filing of such claims in matters involving claims for money, and the Organization filed a companion claim for nine days' compensation on the Claimant's behalf in connection with the same incident, this claim must be denied. The Carrier argues that its proper application of Rule 27, which permits it to temporarily assign employees to work another shift and pay time and one-half as penalty for the inconvenience to employees, has no provision for the exercise of displacement rights and Rules 13, 14 and 22 are inapplicable in such situation

because none of the conditions of the Claimant's regular position were changed. Finally, the Carrier asserts that because all members of the gang were treated in the exact same fashion as the Claimant and not permitted to displace, the Organization failed to establish that he was treated disparately or differently, a necessary element of an allegation of Unjust Treatment.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of the cited Rules of the Agreement in this case. As noted, this is an Unjust Treatment claim, and two related claims involving the same Claimant and the result of the temporary shift change have been simultaneously processed by the parties and are before the Board, one of which requests the payment of additional compensation for the nine-day period of the temporary shift change. However, the Organization on the property clarified its position that no monetary remedy was sought herein, and only a finding of Unjust Treatment was being requested. That being the case, the Board is of the opinion that the underlying issue of the entitlement of an employee to exercise displacement rights under Rules 13, 14 and 22 during a temporary shift change instituted under Rule 27 is best left for consideration in the context of the monetary claim, Third Division Award 36885. In this case, assuming compliance with the requisites of Rule 58 in the processing of this claim, the Organization failed to prove that the Carrier treated the Claimant any differently from other gang members subject to the temporary shift change, who were similarly not permitted to exercise seniority and displace off of the gangs. While the Carrier acknowledged that these type of shift changes can cause hardship for some employees and their families, it determined that the continuity necessary for completion of the task at night during the temporary period involved by the gangs already working outweighed any inconvenience which the parties agreed would be compensated by the payment of the penalty rate during the temporary assignment. Because there has been no showing of Unjust Treatment of the Claimant in this case, the claim under Rule 58 must be denied.

AWARD

Claim denied.

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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 25th day of February 2004.