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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36884
Docket No. SG-36895
04-3-01-3-448

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 displacement rights pursuant to the Agreement dated September 13, 1999. Account Carrier violated the current Signalmen's Agreement, particularly Rules 13, 14 and 22 when on August 11, 2000 Carrier refused to allow Claimant to exercise his displacement rights following a temporary shift change. Carrier's File No. NEC-BRS(S)-SD-909. General Chairman's File No. JY 321056-651000. BRS File Case No. 11717-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 claim 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 when he returned from vacation after August 11, 2000. 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 6:00 A.M. - 2:30 P.M. shift. The Carrier did not permit any gang members to exercise their displacement rights during this shift change period, and the Claimant's Unjust Treatment claim protesting that action was denied by the Board in Third Division Award 36883. The Claimant complied with the temporary shift change and went on a scheduled vacation from August 7 - 11, 2000. Upon his return to his regularly assigned hours on August 11, 2000 the Claimant attempted to displace a junior employee, but was not permitted to do so, leading to the filing of the instant claim.

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, as was the case when the Carrier changed the starting time of Gangs E092 and E496 back to their original 6:00 A.M. - 2:30 P.M. shift on August 4, 2000. The Organization does not challenge the Carrier's right to change shifts under Rule 27, but asserts that such provision does not override other Agreement Rules. The Organization contends that by not permitting the Claimant to exercise his displacement rights upon his return from vacation to new shift hours, the Carrier violated Rules 13, 14 and 22.

The Carrier argues that it properly applied Rule 27 in this case when it temporarily assigned all employees on Gangs E092 and E496 to work the night shift to facilitate completion of the Carrol Interlocking Rehabilitation Project and paid them time and one-half as penalty for any inconvenience. The Carrier contends that because Rule 27 has no provision for the exercise of displacement rights by employees when management makes this temporary shift change, none exists, and if the Board were to find that Rules 13, 14 and 22 are applicable in such situation it would strip Rule 27 of any meaning and make it superfluous, a result clearly not contemplated by the parties. The Carrier asserts that under the exercise of Rule 27 in this case, none of the conditions of the Claimant's regular position were changed,

and to which he returned on August 11, 2000. The Carrier contends that by this claim the Organization is alleging that the Claimant is entitled to a second shift change bump when he was put back on his original shift after the temporary period was over and he returned from vacation, which, it asserts, would lead to an absurd conclusion.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of Rules 13, 14 and 22 in this case. As we noted in Third Division Award 36883, 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 Claimant's monetary claim in Third Division Award 36885. In this case the Organization contends that at the expiration of a temporary shift change directed by management under Rule 27, when the employee returns to "his regular position," a change in starting time occurs under Rule 22 as well as a change in the assigned tour of duty under Rule 14, forming the basis for the exercise of seniority under Rule 13. Whether the change in shift that occurs on a temporary basis under Rule 27 initiates a right to displacement, a matter to be resolved in Third Division Award 36885, the Board cannot conclude that the language of the Agreement countenances an interpretation of Rule 27 that finds that the return to "his regular shift" after conclusion of the temporary shift change constitutes a separate basis to support an employee's displacement rights under Rule 13. If such a shift change occurs under Rule 27, it occurs once, not twice. Accordingly, the Organization has not shown that the Claimant's displacement rights were violated upon resumption of his regular shift when he returned from vacation on August 11, 2000.

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.