

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36887
Docket No. SG-37273
04-3-02-3-254

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the AMTRAK:

Claim on behalf of R. J. Butterfield, J. O'Brien, G. Murphy and R. R. Ray, for the right to exercise their seniority as provided in Rule 14 and payment of all straight time hours for their former daytime shifts for each calendar day commencing November 12, 2000, and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rule 14 and 22, when it changed the Claimants' shifts and did not allow the Claimants the opportunity to exercise their seniority. Carrier's File No. NEC-BRS(N)-SD-924. BRS File Case No. 11893-NRPC(N)."

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 C&S Construction Gang X482 and refusing to allow the Claimants the opportunity to exercise their displacement rights off of the gang and failing to compensate them the straight time rate associated with their normal shift.

The record reflects that it was necessary to bury track, switch and snow melter cables at Canton Junction, Massachusetts, and Claimant Butterfield suggested the work be performed at night in view of the inability to obtain sufficient track outages to accommodate the work during the Claimants' regular first trick hours. On November 8, 2000, the Carrier notified Gang X482 that pursuant to Rule 27 their shift would be changed to 10:00 P.M. - 6:30 A.M. from November 12 through 26, 2000 to accomplish this work. The Claimants were not permitted to exercise displacement rights and received time and one-half pay for the period until they returned to their regular shift on November 27, 2000.

The issue raised by this claim is whether employees are entitled to exercise displacement rights under Rules 14 and 22 when management effectuates a temporary shift change under the provisions of Rule 27. The relevant contract language and parties' arguments are set forth in Third Division Award 36885, where the Board found that an employee is not entitled to exercise displacement rights under Rules 13, 14 and 22 during a temporary shift change instituted by management under the provisions of Rule 27. We adopt the conclusions and rationale set forth therein as dispositive in this case.

Suffice it to say that the basis of the Board's denial of this claim is its finding that the underlying premise of the displacement rights contained in Rules 14 and 22(c) is the occurrence of some change to the conditions of an employee's permanent position, e.g. the assigned tour of duty or starting time hours, which, absent the ability to exercise seniority, would require the employee to work in an ascertainably different position at the straight time rate of pay. By noting specifically in Rule 27 that the temporary shift change was not to be considered a change in the employee's regular position, the foundation upon which displacement rights are based, and by negotiating the payment of compensation to affected employees at the penalty rate

for any inconvenience that might occur, the parties created a special procedure in Rule 27 not intended to set in motion employee displacement rights contained in Rules 13, 14 and 22.

Accordingly, the claim for both the ability to exercise displacement rights and monetary compensation is denied. We note that the Claimants each received pay at the time and one-half rate for each of the days they are herein seeking additional monetary compensation.

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 25th day of February 2004.