

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37174
Docket No. SG-37547
04-3-02-3-634**

The Third Division consisted of the regular members and in addition Referee Martin H. Malin 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 (NRPC):

Claim on behalf of R. H. Brown and M. D. Baublitz, for five and one-half hours at their respective straight time rate of pay for each day worked from September 4, 2001, to September 7, 2001, and be allowed to exercise their seniority, account Carrier violated the current Signalmen's Agreement, particularly Rules 13, 14, 22, 27, 41 and 58, when it changed their working hours on Gang EO92 from 6:00 a.m. to 2:30 p.m., to 9:00 p.m. to 9:00 a.m., and then failed to compensate the Claimants with the proper amount of pay or to exercise their seniority as provided in Rule 13(b). Carrier's File No. NEC-BRS(S)-SD-944. General Chairman's File No. JY321087-650111. BRS File Case No. 12278-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.

The record reflects that the Claimants were assigned as Maintainers to Construction Gang E-092 with assigned hours of 6:00 A.M. - 2:30 P.M. Prior to the cutover of new circuits, members of the gang were notified that their scheduled hours would be temporarily changed to 9:00 P.M. - 9:00 A.M. for September 4, 5, and 6, 2001. In accordance with Rule 27, the Claimants were compensated at the overtime rate for all hours worked during the temporary shift change. The Organization contends that the Claimants should have been allowed to exercise seniority pursuant to Rules 13, 14, and 22, and should have been compensated at the straight time rate for their inability to work from 9:00 A.M. - 2:30 P.M. pursuant to Rule 41.

In Third Division Award 36885 the Board rejected the Organization's contention that employees whose shifts are temporarily changed pursuant to Rule 27 are entitled to exercise seniority. We shall follow Award 36885 and deny the claim to the extent it grieves that the Claimants were not allowed to exercise seniority.

The contention that Rule 41 requires that the Claimants be compensated at the straight time rate for the portion of their usual shifts that they did not work was not before the Board in Award 36885. Nevertheless, the logic of Award 36885 compels denial of that aspect of the claim as well. This is a case where the Claimants' regular shifts were temporarily changed in accordance with Rule 27. The Claimants were compensated for that change by being paid at the overtime rate for all hours worked. The Claimants are not entitled to further compensation for hours not worked.

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 28th day of September 2004.