

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37659
Docket No. SG-38111
05-3-03-3-555

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. (formerly National Railroad Passenger Corp.):

Claim on behalf of G. D. Dorman, for \$751.20, the difference between the straight time rate and the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Rule 27, when it improperly used Rule 14 instead of Rule 27 to temporarily change the Claimant's shift from 6:00 a.m. to 4:00 p.m. to 4:00 p.m. to 2:00 a.m., effective July 22, 2002. The Organization contended that Rule 14 was for permanent changes, and Rule 27 was for temporary shift changes. Carrier's File No. NEC-BRS(S)-SD-988. General Chairman's File No. JY32101026-106031. BRS File Case No. 12768-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 dispute arose as a result of a traffic accident that destroyed the Central Instrument House (CIH) at Lancaster, Pennsylvania, and the Carrier's determination that it was necessary to move to an around-the-clock operation at the Lancaster Signal House to facilitate timely reconstruction. The Carrier provided notice to the five junior employees that they would be affected by the application of Rule 14(d) beginning July 22, 2002 and their assigned tour of duty would be Monday-Friday, 4:00 P.M. to midnight rather than their normal tour of duty from 6:00 A.M. to 4:00 P.M. Said notice also indicates that overtime would be available from midnight to 4:00 A.M. and on relief days, that they would be returned to their regular work schedule after completion of the project, and that daylight tour employees would be required to report for work at 4:00 A.M.

The record reflects that discussions occurred between the parties resulting in an Agreement as to how this reassignment of positions to second shift would take place. In accord with the written confirmation of said discussions dated July 17, 2002, without prejudice to their positions with respect to the proper application of Rule 14, the parties agreed that the change would be effective July 22, 2002, the five changed positions would be advertised for bid on July 24 and awarded immediately upon the close of the advertisement, if senior employees are awarded the positions, the affected employees would be returned to their first shift assignments, and upon completion of the project, employees will revert back to their original assignments without the need for additional advertisement of positions. A Supplemental Letter was issued regarding Hardship Replacements granted to two affected employees and the substitution of volunteers by mutual agreement.

It appears that, although the Carrier was unaware of the length of time it would take to complete the rebuilding of the CIH at the time, and chose to utilize Rule 14 with its displacement rights to provide the most cost effective around-the-clock coverage, the actual project was completed in about three weeks time, no one exercised displacement rights, and all were returned to their normal daylight work assignments thereafter. The instant claim was initiated on September 16, 2002 on behalf of one of the affected employees contending that the temporary change in shift should have been accomplished under Rule 27, not Rule 14, and that the Claimant was entitled to the difference between the straight time pay that he received and the overtime pay that he should have received.

The provisions of Rules 14(d) and 27, which must be interpreted by the Board to resolve the issue herein, are as follows:

"RULE 14 - CHANGE IN POSITION

An employee may elect to retain his position or within ten (10) calendar days from the date of written notification exercise displacement rights if changes occur in any of the following conditions of his position:

- (d) Assigned tour of duty, except due to Daylight Saving Time.

RULE 27 - CHANGING SHIFTS

An employee changed by the direction of management from his regular position to another shift shall be paid at the time and one-half rate for work performed until returned to his regular position.

Relief assignments of different shifts will be kept to a minimum consistent with creating regular relief jobs and avoiding unnecessary travel for relief men. Shift changes included in such regular relief assignments, the exercise of seniority by bid or displacement or when shifts are temporarily exchanged at the request of the employees involved, shall not be subject to overtime pay provided in the preceding paragraph."

The Organization argues that historically it has been the Carrier's practice to use Rule 27 for temporary shift changes, and that Rule 14 is intended to apply to permanent shift changes. The Organization asserts that what occurred here falls squarely within the clear language of Rule 27 - a change from the employee's regular position to another shift - and argues that the plain meaning of the Rule must be given application by the Board, citing Third Division Awards 13097, 14496 and 16573. In the absence of any exception to Rule 27 in the Agreement, the Organization contends that none should be implied, relying on Third Division Awards 18287 and 19158.

The Carrier points out that the position taken by the Organization in this case is contradictory to many other claims. The Carrier argues that there is nothing in either

Rule 14, Rule 27 or elsewhere in the Agreement, that limits its use of such provisions to one particular set of circumstances, and that it is its prerogative to rearrange existing work assignments to meet its operational needs unless prohibited from doing so by the Agreement, citing Third Division Award 16191. The Carrier contends that, so long as it followed Rule 14(d) by giving proper advance notice of the change and permitting employees the right to exercise their displacement rights, which it did in this case, the Organization cannot limit its use to only permanent changes. The Carrier notes that had it known at the beginning that the project would only take three weeks to complete it might have decided that it was most cost effective to utilize Rule 27. The Carrier argues that the Claimant could have exercised his displacement rights or requested a hardship replacement, but did neither and should not be permitted to financially benefit when he failed to exercise his contractual rights.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of Rule 27 in this case. As noted by the Carrier, the issue presented is whether any provision of the Rules limits how and when it can apply their terms. There is nothing in the language of Rule 14 that requires its use only in permanent changes in any of the five listed aspects of a position, or limits its use in temporary situations involving the duration of a particular project. Similarly, the language of Rule 27 does not specify that management can only utilize its terms to change an employee from his regular position to another shift on a temporary basis. While the realities of these provisions may dictate that it is more operationally efficient to utilize Rule 27, with its penalty pay consequence, rather than Rule 14(d) with its notice and displacement rights implications, for temporary shift changes, the parties agreed to no such limitation to the Carrier's prerogative to make such choice. So long as the Carrier complies with the terms of the Rule under which the change in shift or assigned tour of duty takes place, there is no merit to the Organization's claim that it should have been accomplished under a different Rule. No binding past practice modifying the clear language of the Agreement has been established. See Third Division Award 16191.

As admitted by the Carrier, had it known that the reconstruction project involved in this case would only take three weeks, it may have utilized Rule 27 rather than affording displacement rights and advertising these new second shift positions under Rule 14(d). In this case, there is no dispute that the creation of a new second shift position was a change to the assigned tour of duty of the affected employees' permanent positions, thereby meeting the requirements of Rule 14(d). See Third Division Award 36887. There is no evidence that the Carrier did not afford the

Claimant the displacement rights to which he was entitled when the assigned tour of duty of his position changed. The Claimant was given the opportunity to exercise displacement rights and/or claim a hardship with respect to the Rule 14(d) change for which he seeks compensation herein. He failed to exercise these rights and there is no contractual basis for granting him additional compensation in this case. Accordingly, the claim must be denied.

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 7th day of December 2005.