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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37660
Docket No. SG-38112
05-3-03-3-556**

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.:

Claim on behalf of O. S. Shreckengost, for compensation at the time and one-half rate until restored to the position he would have exercised his seniority to obtain, account Carrier violated the current Signalmen's Agreement, particularly Rules 13, 14, 22, 27 and 28, when it improperly changed the Claimant's regular tour of duty from 6:00 a.m. - 4:00 p.m., to 9:00 p.m. - 7:00 a.m., and then denied him the right to exercise his seniority and displace. Carrier's File No. NEC-BRS(S)-SD-991. General Chairman's File No. JY32101029-18032. BRS File Case No. 12782-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 the Carrier's September 12, 2002 notice to members of Signal Gang No. R-964 that a temporary change in their tour of duty from 6:00 A.M. - 4:00 P.M. to 9:00 P.M. - 7:00 A.M. would occur between September 16 and 26, 2002 under Rule 27 in connection with the replacement of switch and signal circuits at North Philadelphia. The Organization filed individual claims on behalf of the Claimant, and apparently other members of the Signal Gang, asserting a denial of displacement rights in violation of Rules 13, 14, 22, 27 and 28 and seeking overtime pay until the Claimant is restored to the position he would have exercised his seniority to. There is no dispute that the Claimant received pay at the penalty overtime rate during the period his shift was changed, and that all members of the Signal Gang returned to their regular tour of duty after this time.

The provisions of the following Rules have application to a resolution of the issue herein:

"RULE 13 - EXERCISE OF SENIORITY

- (b) An employee whose position has been abolished or who has been displaced by a senior employee or who is entitled to exercise seniority under Rule 14 shall have the right to displace within ten (10) calendar days in any seniority class in which he holds seniority....

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 22 - STARTING TIME HOURS

- (c) The starting time of employees shall not be changed without first giving the employees affected five (5) calendar days notice with copy to Local Chairman. Changes in starting times made under the provisions of this Rule shall not require readvertisement; however, employees whose starting times are changed more than one (1) hour may elect to exercise their seniority to other positions in accordance with Rule 14.

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.

RULE 28 - OVERTIME HOURS

- (c) Employees will not be required to suspend work during regular working hours to absorb overtime."

The Organization argues that the Carrier improperly utilized Rule 27 and ignored the requirements of Rule 22 providing that an employee who has his starting time changed by more than one hour is entitled to exercise his seniority to another position, citing Public Law Board No. 6564, Case 5 and Third Division Award 22758. It notes that there was no established shift starting at 9:00 P.M., and Rule 27 contemplates temporary shift changes to existing shifts. The Organization posits that the language of Rule 27 was intended to apply to relief assignment

positions, not advertised gang positions as was the case herein, and asserts that the clear language of the Rules must be applied as written, citing Third Division Awards 13097, 14496 and 16573. The Organization contends that the Carrier violated the Agreement by denying the Claimant his displacement rights.

The Carrier notes that the Organization's position in this case is in direct opposition to the one posited in Third Division Award 37659. It asserts that it complied with all requirements of Rule 27 when making the temporary shift change in this case, pointing out that the Claimant's regular assignment was not changed under Rule 14 or 22 as shown by the fact that he returned to his regular position upon completion of this assignment. The Carrier argues that the issue of its proper use of Rule 27 to effectuate temporary shift changes of this type, and the fact that employees have no displacement rights under a Rule 27 shift change has been precedentially decided on this property and must be followed herein, relying on Third Division Awards 36883, 36884, 36885, 36887, 37173 and 37174.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of the Agreement in this case by denial of displacement rights to the Claimant. There is no language in Rule 27 limiting its use only to an individual employee as opposed to an entire gang or to shift changes only to an existing shift, as argued by the Organization. See, e.g. Third Division Award 37659. The Carrier was within its contractual rights to effectuate the temporary shift change in this case under Rule 27, so long as it complied with the requirements for penalty pay for the duration of the change of shift, which it admittedly did. The Board has held that temporary shift changes under Rule 27 do not entitle employees to displacement rights under Rule 13 as a change in an assigned tour of duty or starting time in excess of one hour would under Rules 14 and 22. See Third Division Awards 36885, 36887 and 37174. Accordingly, the claim 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 7th day of December 2005.