

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40473
Docket No. SG-40018
10-3-NRAB-00003-070185
(07-3-185)**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (**(Brotherhood of Railroad Signalmen**
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of R. R. Brown, for \$20.00 per day from April 29, 2005 until January 27, 2006 (272 days) for a total of \$5,440.00, account Carrier violated the current Signalmen’s Agreement, particularly Rule 53, when it held the Claimant on his former position on Gang 8226 at Kelso, California and did not release him to his new position until the end of his shift on January 27, 2006. Carrier’s File No. 1444768. General Chairman’s File No. UPGCW-53-1223. BRS File Case No. 13703-UP.

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 precipitating event giving rise to this dispute occurred when the Carrier awarded Claimant R. R. Brown Lead Signaller Position 7738 at Roseville, California, on April 29, 2005. However, he was not released from Position 8226 until January 27, 2006. The Organization filed a claim on March 9 and an amended claim dated March 13, 2006. In that claim, the Organization maintained that the Carrier had violated Rules 53 and 80 when it failed to assign the Claimant to Lead Signaller Position 7738 within 15 calendar days after April 29, 2005. The total amount claimed was \$5,460.00, or \$20.00 per day for 272 days between April 29, 2005 and January 27, 2006.

At issue are the following Rules as found in the Parties' Agreement:

Rule 53 – Assignments to New Positions or Vacancies

Notice of assignment to bulletined positions will be posted five (5) days after the bulletin closes. Transfer of successful applicants to new assignments will be made within fifteen (15) calendar days after date of assignment. If the successful applicant is not so transferred within the above specified period and held by direction of the management, the employee will be allowed a penalty allowance of \$20.00 per calendar day until such time as the employee is placed on said position.

Rule 80 – Loss of Earnings

An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss.

The claim was denied on May 1, 2006. The Organization appealed the denial by letter of May 5, 2006. The Carrier again denied the appeal in a letter dated June 20, 2006. In that denial the Carrier disputed the Organization's calculation of the money owed to the Claimant:

“Our investigation revealed that the Organization's facts are inaccurate. The Carrier's investigation indicates that Mr. Brown was indeed assigned to a Lead Signalman position on Gang 5767 on April 29, 2005. However, Mr. Brown bid off that position on July 22, 2005 and was assigned to Gang 7664 as an Interlocking Repairman. The instant claim fails to acknowledge Mr. Brown's bid to Gang 7664 in July of 2005. Therefore, the claim is inaccurate and defective in its analysis.

Nevertheless, based upon the Carrier's assessment of the facts, it does appear that Mr. Brown was held on his former position on Gang 8226. As such, we do agree that he is entitled to compensation under Rule 53 of the Agreement. Although, the timeframe for which the Carrier is in fact obligated is different than the Organization's timeframe.

Rule 53 specifies, in pertinent part, that ‘Notice of assignment to bulletined positions will be posted five (5) days after the bulletin closes. Transfer of successful applicants to new assignments will be made within 15 days after date of assignment. If the successful applicant is not so transferred within the above specified period and held by direction of the management, the employee will be allowed a penalty allowance of \$20.00 per calendar day until such time as the employee is placed on said position.’

In the instant case, Mr. Brown was assigned to the Interlocking Repairman position on Gang 7664 on July 22, 2005. However, Mr. Brown was ‘held’ to his position on Gang 8226 and not allowed to assume his position on Gang 7664. Per the mandate of Rule 53, Mr. Brown is eligible to receive the \$20.00 penalty payment 15 calendar days after his date of assignment through January 27, 2006.”

The Carrier concluded that because the Claimant bid off of the Lead Signalman position on July 22, 2005, he was entitled only to payment for being held on his position on Gang 8226 from August 7, 2005 (15 days after his assignment to the Interlocking Repairman position on Gang 7664) until January 27, 2006 – the date that he was actually placed on the second position (174 days at \$20.00 per day = \$3,480.00).

The essential chronology of this case is not in dispute. The Claimant bid for and was awarded the Lead Signalman position on Gang 7738 as of April 29, 2005. He was held on his original position for more than 15 days, and was thus – according to the language of Rule 53 – entitled to penalty pay of \$20.00 per day. The Organization argues that the Claimant was entitled to \$20.00 per day from April 29, 2005 until he was ultimately assigned to Gang 7664 on January 27, 2006 – a total of 272 days – or \$5,440.00. However, the Carrier points out that the Claimant bid off of his old position (and the newly assigned position on Gang 7738) while being held and was assigned to an Interlocking Repairman position on Gang 7664 on July 22, 2005. The Carrier then argues that the Claimant's penalty payment should extend only from the time that he was held on his original position after the second bid until January 27, 2006, or approximately 174 days (for a total payment of \$3,480.00).

The Carrier seeks to ameliorate the contractually bargained penalty payment by asserting that once the Claimant bid on a second position, from which he was also held back, he was no longer entitled to payment for being held back on the first successful bid (the April 29, 2005 bid onto Gang 7738). Such reasoning finds no basis in the contract language of the Parties' Agreement.

The Carrier's violation of Rule 53 commenced on the 15th day after the Claimant was awarded the position of Lead Signalman on Gang 7738 but continued to be held by the Carrier on his original position on Gang 8226. That condition was not changed by the Claimant's successful bid to Gang 7664 in July 2005 (after which, the Board notes, he was still retained on his former position on Gang 8226). Had the Claimant been timely placed on the position for which he bid on Gang 7664, the Carrier's liability under Rule 53 would have been limited to the time he was held back from the position on Gang 7738 and the time he assumed the position on Gang 7664. However, the Claimant continued to be held on his original position on Gang 8226 throughout the time that he bid on the intervening position. It was not until January 27, 2006 that the Carrier released him from his original position. The Claimant's second attempt to bid off of his position on Gang 8226 does not release the Carrier from its original obligation under Rule 53 regarding assignment of the Claimant to the Lead Signalman position on April 29, 2005.

To clarify, the Carrier originally came under the strictures of Rule 53, 15 days after it assigned the Claimant to the position that he had bid for on Gang 7738,

when it held him back from that position. The Carrier's liability for that action continued through the time that the Claimant would have, theoretically, been placed on the position that he successfully bid for on Gang 7664. A "new" liability – in practice a continuation of the original liability – commenced on the 15th day following the Claimant's successful bid onto Gang 7664 and continued until he was released from his original position on Gang 8226 on January 27, 2006. Thus, the Carrier's total monetary liability extends from May 14, 2005 through January 27, 2006, for a total of 258 days or \$5,016.00.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 14th day of May 2010.