

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41615
Docket No. SG-41398
13-3-NRAB-00003-100315

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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. Greeley, for payment of 16 hours at the retarder yard maintainers half-time rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 8 when on March 15 and 20, 2009, it changed the Claimant’s shift and failed to properly compensate him for relieving a retarder yard maintainer who was off work on medical leave. Carrier’s File No. 1519334. General Chairman’s File No. N 8 807. BRS File Case No. 14364-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 claim at bar was filed by the Organization asserting that on two dates the Carrier changed the Claimant's shift without proper compensation of the time and one-half rate of pay as required by Rule 8. The Organization argues that on March 15, 2009, the Claimant's regularly scheduled 7:30 A.M. to 4:00 P.M., Monday through Friday shift was changed to 12:00 Midnight to 8:00 A.M., Sunday through Thursday. It also argued that on March 20, 2009, the Claimant's Midnight to 8:00 A.M. shift was changed back to the 7:30 A.M. to 4:00 P.M. shift. Because the Claimant was only compensated at the straight time rate, he was denied his proper half time rate on both days.

The Carrier denied the claim on the property arguing that what occurred was a customary shift of positions. It argued procedural issues of timeliness, in that the Claimant was a Retarder Yard Maintainer on Gang No. 5167, who was assigned and working that position since January 25, 2009. On March 15, the Claimant worked the very same shift and hours he had worked since he assumed that position. On March 20 the Claimant voluntarily made a change of position back to his old position and shift. Because this was not forced, nothing permits payment under Rule 8 of the Agreement for this voluntary decision by the Claimant. For both procedural reasons and on the merits, the claim lacks any support.

There were no procedural errors by either party to the dispute. Rule 8 (Change of Shift) of the Agreement states in part:

"A. Employees changed from one shift to another will be paid for the first shift of each change at time and one-half rate, except where change is made in the exercise of seniority; for the convenience of employees; or to employees working more than one shift of regular relief assignments."

The Board carefully studied the record, paying particular attention to the statements and on-property record around the two dates in dispute. On the date of March 15, the Organization argues that the Claimant changed shifts, whereas the Carrier argues that he worked his regular shift. There is a clear conflict in material facts and no resolution is possible by the Board. Accordingly, the Board is compelled to consider this date on which both sides provide argument which is irreconcilable, as lacking factual support. Statements by Manager Moritz and that of the Claimant do not permit more than a dispute without the burden of proof having been met by the Organization (Third Division Awards 33895, 36977 and 37204).

The same cannot be said for the date of March 20, 2009. There is no question in the record that the Claimant changed shifts on that date. The Carrier states that it was voluntary, but the record indicates otherwise. The Claimant states in part that when he came to work on March 20 after having relieved a fellow employee who was off for back surgery, he worked a different shift to handle a derailment, "not getting the overtime that I should of for the whole day." The Board finds after full study of the record evidence that the Claimant was not properly compensated under Rule 8 when he worked a different shift on a derailment. Accordingly, the Board will allow compensation for March 20 for eight hours at the one-half rate of pay. As noted above, compensation for March 15, 2009 is denied.

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 24th day of April 2013.