

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41702
Docket No. SG-41600
13-3-NRAB-00003-110235

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 E. K. Murphy, for four hours at the time and one half rate of pay, commencing July 18, 2009, and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Appendix B-5, Section IV - Trouble Desk, and Assistant Signal Foreman Memorandum of Agreement dated August 8, 1980, when it created an unqualified trouble desk position at the Providence M.O.W. Base RI, and denied the Claimant these work opportunities. Carrier’s File No. BRS-SD-1135. BRS File Case No. 14536-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 involves a challenge to Carrier's creation of a Trouble Desk Signalman position as a violation of the Assistant Signal Foreman Agreement of August 8, 1980 and the Overtime Call List for the Trouble Desk, the pertinent portions of which appear below.

"APPENDIX B-5

IV. Trouble Desk Overtime on the Trouble Desk will be offered as follows:

A. The Assistant Foreman-Trouble Desk working the preceding trick will be offered the opportunity to work the first four (4) hours of the vacancy and the Assistant Foreman Trouble Desk scheduled for work the succeeding trick will be offered the opportunity to work the last four (4) hours of the vacancy.

MEMORANDUM OF AGREEMENT DATED AUGUST 8, 1980

3. It is also agreed that the positions presently assigned to the Communications and Signals Trouble Desk located in New Haven, Connecticut, will be classified as Assistant Foreman and will be readvertised in accordance with the current rules of the Agreement."

The Claimant established seniority as an Assistant Foreman on April 8, 1988 and, at the time of the claim, was regularly assigned to the Assistant Foreman Trouble Desk Relief position headquartered at the Providence, Rhode Island, M.O.W. Base with rest days of Friday and Saturday. The Carrier advertised and filled a third trick Signalman Trouble Desk position on July 18, 2009 when it was unable to fill the vacant third trick Assistant Foreman Trouble Desk position despite repeated advertisements. This claim disputes the creation of that "unqualified" position and the denial of the Claimant's Agreement right to be offered the opportunity to work overtime on the vacant third trick Assistant Foreman position.

A careful review of the record reveals that this claim raises the exact same issues, and presents the exact same arguments, as those considered by the Board in Third Division Award 41700, with the exception that the Claimant herein was assigned to the Assistant Foreman Trouble Desk Relief position, while the claimant in that case was assigned to the Assistant Foreman Trouble Desk position on the second trick, and the claimant in Third Division Award 41701 was assigned to the Assistant Foreman

Trouble Desk position on the first trick. Because Appendix B-5 (IV) provides an overtime opportunity for both the Assistant Foreman Trouble Desk on the preceding and succeeding tricks, and the Claimant herein was the Relief for those positions, the rationale for finding a violation of the Memorandum of Agreement and Appendix B-5 (IV) stated by the Board in those Awards is equally applicable, and is adopted herein.

As noted in those cases, Third Division Awards 40976, 40977 and 40980, between these parties on this property, decided the issue presented by this claim in favor of the Organization, and we are unable to accept the Carrier's contention, set forth in its Dissent, that the basis for the finding or its rationale is palpably erroneous or illogical. Rather, we are convinced that the Board's findings should be followed in this case under the principle of stare decisis. See, Third Division Awards 39294 and 39006. The Carrier's inability to find qualified employees to fill the vacant Assistant Foreman Trouble Desk positions does not permit it to have the job performed by a Signalman for less pay, as it did in this case. Accordingly, under Appendix B-5 (IV) the Claimant, who was the Assistant Foreman Trouble Desk Relief, is entitled to be compensated four hours' pay for each day the Signalman performed work on the third trick on the Trouble Desk during the days he was assigned to work during the claim period. As was the case in Award 41700, the Carrier argues that the penalty requested was excessive because straight time is paid for lost work opportunities on this property, and there was no rebuttal by the Organization. Therefore, the claim is sustained for payment at the straight time rate of pay.

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 16th day of September 2013.