

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42181  
Docket No. SG-42328  
15-3-NRAB-00003-130315**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Railroad Signalmen  
(  
(BNSF Railway Company

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:**

**Claim on behalf of D. W. Rowe, for compensation in the amount of \$300.00, account Carrier violated the current Signalmen’s Agreement, particularly Rule 41, when it withheld him from his new position, S6127, and then refused to pay him the additional \$25.00 per day worked on his old position, S6176, for the period he was held beyond 15 days. Carrier’s File No. 35-12-0030. General Chairman’s File No. 12-012-BNSF-188-SP. BRS File Case No. 14850-BNSF.”**

**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.

At the time of the incident giving rise to this dispute, Claimant D. W. Rowe was originally assigned to CTC Maintainer Position S4454, headquartered in Pasco, Washington. He bid for and on September 30, 2011, was awarded Signalman Position

S6127 headquartered in Bonner's Ferry, Idaho. The position had a report date of October 10, 2011. However, Signal Manpower received instructions from Signal Supervisor Andrew Escobedo to hold the Claimant on Position S4454, which is a maintenance position responsible for making sure that the signal system in Pasco Yard operates properly between the hours of 3:00 P.M. and 11:00 P.M. Wednesday through Monday. It is considered a safety sensitive position, and one that could not be left vacant while it was advertised and filled. So the Claimant was being held over until his replacement was assigned and trained.

While he was still being held on CTC Maintainer Position S4454, the Claimant bid on yet another position, Signalman Position S6176, headquartered in Ellensburg, Washington, which he was awarded on October 19, 2011. Ultimately, the Claimant never occupied the Bonner's Ferry Signalman Position (S6127) because he was held over on CTC Maintainer position S4454 until November 7, 2011, when he was released to his last awarded Signalman Position S6176.

The Parties have negotiated provisions relating to new assignments and the time limits for successful applicants to transfer to their new positions. Under Article 41(F), successful applicants are to be transferred to their new assignments within 15 calendar days. If that does not happen, Article 41(G) provides that the employee will be paid at the rate of the new position plus an additional \$25.00 per day until he is transferred<sup>1</sup>:

**"RULE 41 – BULLETIN AND ASSIGNMENT**

\* \* \*

- F. Transfer of successful applicants to new assignments will be made within fifteen (15) calendar days after assignment. New positions, or vacancies, may be filled temporarily pending permanent assignment.
- G. If successful applicant is not placed upon position within the specified time limit, the successful applicant thereafter will be paid the rate of the position awarded plus an additional \$3.00 per working day until such time as he is transferred thereto."

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<sup>1</sup> The printed Agreement provides for a payment of \$3.00 per working day, but the Parties have amended that to \$25.00.

In addition to the increase of the payment in Article 41(G) from \$3.00 to \$25.00 per working day, the Parties also modified other language in Article 41 (G), so that it now reads:

“G. If successful applicant is not placed upon position within the specified time limit, the successful applicant thereafter will be paid the rate of the position awarded, plus an additional \$25.00 per day worked by the applicant until such time as he/she is transferred thereto.”

The Claimant was assigned Position S6127 on September 30, 2011. Accordingly, the 15-day grace period for him to be transferred to that position began then and ended on October 14, 2011. The Claimant was still being held on the S4454 CTC Maintainer position, so under Article 41(G), he was entitled after October 14 to be paid \$25.00 for each day worked until he was actually transferred to his new position, S6127. However, in the meantime, the Claimant had bid on a third position, S6178, which he was awarded on October 19, 2011. Fifteen days after that is November 3, 2011. The Claimant was finally released to his final position, S6176, on November 7, 2011.

The Claimant entered the \$25.00 per working day allowance on his payroll from October 15 until November 7, 2011, and was paid \$425.00 (\$25.00 per day times 17 working days). Subsequently, however, the Carrier recalculated the amount that he was due, based on his having been awarded Position S6178 on October 19, 2011. According to the Carrier, the assignment to Position S6178 re-set the clock, so to speak, and a new 15-day grace period started to run on October 19 and ended on November 3, 2011. In the end, the Carrier calculated that the Claimant was entitled to the \$25 payment for only five days – October 15 and 16 before he was awarded Position S6178 on October 19, and November 4, 5 and 6, the period between the end of the grace period for Position S6178 and when he was finally released from the CTC Maintainer position to assume his new duties with Position S6178 on November 7, 2011. Five days at \$25.00 per day is \$125.00. On February 29, 2012, the Carrier deducted \$200.00 from the Claimant's pay, and another \$100.00 on March 15, 2012, for a total of \$300.00.

The Organization contends that the Carrier violated the Parties' Agreement when it failed to compensate the Claimant the \$25.00 per working day allowance for all working days that he was held on his former position after he was awarded position S6127, but for the 15 calendar days' grace period for that position. According to the Carrier, the Claimant is only entitled to the \$25.00 allowance for the working days that he was being held from his new assignments, not for the days he was being held to his old assignment.

The relevant language of Article 41(F) is straightforward: “Transfer of successful applicants to new assignments will be made within fifteen (15) calendar days after assignment.” Article 41(G) picks up on that commitment: “If successful applicant is not placed upon position within the specified time limit, the successful applicant thereafter will be paid the rate of the position awarded, plus an additional \$25.00 per day worked by the applicant until such time as he/she is transferred thereto.” There is no dispute that if the Claimant had not bid on Position S6178, he would have been entitled to the “late transfer” allowance from October 15 – the end of the transfer grace period for Position S6127 – until November 7, when he was released from his former position as a CTC Maintainer at Pasco. The issue before the Board is: how should grace periods be calculated when an employee bids on a second new assignment before he or she is actually transferred to the first new assignment?

Article 41(F) gives the Carrier 15 days’ leeway to implement an employee’s physical transfer to a new assignment. That grace period for Position S6127 had just ended – on October 15, 2011 – when the Claimant was assigned to Position S6178 on October 19, 2011. Pursuant to Article 41(F), the Carrier had 15 days from October 19 to affect his transfer from Position S6127 – the position he was then assigned to – to Position S6168. However, the Claimant had not yet been transferred to Position S6127 from his original CTC Maintainer position. The fact that he had been assigned to a third position does not change that fact. Article 41(G) states that “If successful applicant is not placed upon position within the specified time limit, the successful applicant thereafter will be paid . . . an additional \$25.00 per day worked . . . until such time as he/she is transferred thereto.” On the other hand, once the Claimant had accepted Position S6168, there was no practical point for the Carrier to physically affect his transfer to Position S6127, only to move him immediately to Position S6168.

The language of Article 41(G) focuses on placing successful applicants on their new positions. There are a number of reasons why an individual is not immediately transferred; moving employees among bid positions while maintaining ongoing operations safely and efficiently is a complex, if not Herculean, task. While there are good arguments on both sides, the Board concludes that the better interpretation of Articles 41(F) and (G) is that a new grace period starts when an employee accepts a third assignment before he has been transferred from his first assignment to the second. Between them, Articles 41(F) and (G) recognize that, as a practical matter, it may take a short while for the Carrier to effect a successful bidder’s transfer and that the Carrier should not be penalized during that period, which the Parties have defined in the Agreement as 15 days. Holding the Carrier to the original grace period for the position that the employee has already decided not to occupy would eliminate the grace period for the third assignment to which it is contractually entitled. Accordingly, the Board finds that the Carrier did not

**violate the Agreement when it denied the Claimant's request for the \$25.00 per working day allowance during the grace period for it to place him on Position S6178.**

**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 28th day of October 2015.**