

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42446
Docket No. SG-42040
16-3-NRAB-00003-120415**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Railroad Corp.:

Claim on behalf of O. Ducksworth for 32 hours at his respective straight time rate of pay, account Carrier violated the Agreement, particularly Rules 21, 74, and past practice, when it required the Claimant to work the monthly rated Foreman’s position on Gang 12 at Kensington and then refused to compensate him accordingly for June 11, 18, and 25, 2011, and July 2, 2011. Carrier’s File No. 11-27-805. General Chairman’s File No. 105-ME-11. BRS File Case No. 14762-NIRC.”

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 is a case about a Lead Signalman who worked a role, without the benefit of the presence of a Foreman, for a period of nearly 3 weeks. The Organization says he should be entitled to the pay of a Foreman. The Carrier denies this claim.

The Organization provides the following Collective Bargaining Agreement (CBA) excerpts as the Rules in dispute:

“RULE 21 – PRESERVATION OF RATE

An employee required to fill the place of another employee receiving higher rate will receive the higher rate for time so assigned, except when an assistant signalman is required to relieve another assistant signalman, he will receive his own rate. An employee required to fill temporarily the place of an employee receiving a lower rate, will not have his rate reduced.

RULE 74 – SHORTAGE IN PAY

When an employee's pay is short one day or more, a check will be issued to cover, if requested. Employees will be advised as promptly as possible when claim for compensation is not allowed and reasons therefore.”

There is no dispute that, for the time period in question, the normal Foreman of this Gang was working the night shift on another Gang, or, for one week, was on vacation. While working, due to the Federal Hours of Service Law, the Foreman could not be disturbed during his mandated rest without resetting his required rest clock. To do so would have prevented him from working with the Gang on the night shift. Obviously when on vacation, he was likewise unavailable to the Claimant for advice.

The Organization says the Claimant was doing the work of the Foreman and should be paid accordingly. The Carrier disputes this and says that the Claimant was not instructed to perform the work of the Foreman. The Carrier also says that the Foreman left notes for the Claimant whenever he went off shift to help guide the Claimant. The Organization says that these notes were effectively a “turnover” and not the same as being available, should the Claimant have any questions. This argument has some appeal.

There is no dispute that the CBA provides that a Lead Signalman can supervise up to five Signalmen. There is no evidence on the record that the Claimant was ever required to exceed this number of employees in his charge.

There is also no evidence on the record that the Claimant ever actually did have questions for the Foreman which he (the Claimant) could not answer effectively.

In essence, the question before this Board is how long can a Foreman be away from his role before the Lead Signalman effectively becomes the Foreman?

The answer is – the Agreement is silent on this issue. It is accepted, through a long line of cases presented to this Board, that there is no requirement that the Carrier fill a Foreman vacancy. No language in the Agreement compels this. Granted, all of the other cases involved a shorter time frame and did not include a week of vacation. There would seem to be some common sense to suggest, as the Organization argues, that the Carrier should not be allowed to blank the Foreman position indefinitely. However, to require the Carrier to come up against some arbitrary limit would be, in effect, to add language to the existing CBA. This is something that a Board, such as this one, does not have the authority to do. Thus, it seems to this Board, that absent any such restriction, it falls to Management to effectively manage its workforce, including those employees supervised by a Foreman. There surely would come some time when it might not be wise for a Foreman to not be there to supervise employees, but that is not a matter for this Board to determine.

As a result, finding no agreement language to the contrary, this claim must fail.

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 31st day of October 2016.