

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42920
Docket No. SG-43029
18-3-NRAB-00003-150240**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim on behalf of the Committee of the Brotherhood that:

Claim on behalf of A.K. Houck, for 408 hours at his half-time rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 15, 17, 27, 62, and the National Vacation Agreement, when it changed the work schedule that the Clamant had been assigned to by Bulletin #LNLO-0034, from 0700-1500 Sunday through Thursday with rest days Saturday, Sunday, and Holidays, to 2300-0700 Sunday through Thursday and then refused to compensate him at the appropriate time and one-half rate. Carrier’s File No. 2014-157180. General Chairman’s File No. 13-03-03. BRS File Case No. 15147-L&N.”

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 Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier violated the parties' Agreement when it unilaterally changed the Claimant's work hours, moving the Claimant to a different shift, without compensating him at the overtime rate. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier improperly changed the Claimant's assigned hours when it assigned him to fill a vacant third-shift position without compensating him at the required overtime rate, because the Carrier erroneously asserted that its action was permitted because the Claimant was a relief signal maintainer, and because there is no support for the Carrier's assertion that Rule 48 applies to this matter. The Carrier contends that the instant claim should be denied in its entirety because the Organization failed to meet its burden of showing that a rule violation occurred, because the Carrier did not violate the Agreement when it assigned a vacancy relief employee to perform service in a vacant position, because the Agreement supports the Carrier's ability to adding the junior employee in a lower class to an open position, and because there is no merit to the Organization's position.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the record in this case, and we find that the Organization has successfully met its burden of proof that the Carrier violated the Agreement when it failed to pay the Claimant time and one-half after moving him to a different shift. Therefore, this claim must be sustained.

The Carrier relies on Rule 27(b), which states the following:

"Relief assignments consisting of different shifts will be kept to a minimum consistent with creating regular relief jobs and avoiding unnecessary travel for relief men. Such assignments will be excepted from the requirements of paragraph (a) of this Rule 27 for penalty payments upon change of shifts for shift changes included in the regular relief assignments."

The problem with relying on that section is that the Claimant did not have a relief assignment consisting of different shifts. The Claimant, as the Carrier admits,

was a relief signal maintainer assigned to work a position from 0700 to 1500. He was subsequently assigned to perform relief service from 2300 to 0700, which was a position that had gone with no bid and the Carrier needed coverage. Rule 27(b) is an exception to Rule 27(a), which states, in part:

“If changed from one shift to another, he shall be paid overtime rate and in accordance with provisions of this agreement until returned to his regular shift”

The record reveals that the Carrier unilaterally changed the assigned shift of the Claimant’s position in order to cover the vacant third-shift position. That was not a regular relief assignment consisting of different shifts. That was the Claimant being changed from one shift to another.

Since Rule 27(b) does not apply, Rule 27(a) requires that the Claimant be awarded overtime for the time that he spent in the position to which he was moved by the Carrier. Therefore, this claim must be sustained.

AWARD

Claim sustained.

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 February 2018.