

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43870
Docket No. SG-44941
20-3-NRAB-00003-180389**

The Third Division consisted of the regular members and in addition Referee Paul Betts 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 B.L. Miller for \$580.00, account Carrier violated the current Signalmen’s Agreement, particularly Rule 41, when from December 4, 2016, until January 30, 2017, it held the Claimant on Gang 5763 after being awarded a new assignment on November 18, 2016, without compensating him the \$20.00 per calendar day penalty payment after being held for more than 15 calendar days. Carrier's File No. 1681123. General Chairman's File No. N-0089. BRS File Case No. 15779-UP. NMB Code No. 128.”

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 instant dispute involves the interpretation and application of rules related to hold pay and force assignments, specifically Rule 41 and Rule 43. In relevant part, the two rules state the following:

“Rule 41 – Assignments to New Positions or Vacancies

‘Notice of assignment to bulletined positions will be posted five (5) days after the bulletin closes. Transfer of successful applicants to new assignments will be made within fifteen (15) calendar days after date of assignment. If the successful applicant is not so transferred within the above specified period and held by direction of the management, the employee will be allowed a penalty allowance of \$20.00 per calendar day until such time as the employee is placed on said position

When an employee bids for and is awarded a bulletined position, the former position will be declared vacant and bulletined...’

Rule 43 – No Valid Bids Received

‘When no valid bids are received for an advertised maintenance position and that position is to be filled, the junior Class "1" employee with seniority on that district working on a gang may be force assigned. An employee occupying a signalman position cannot be forced to another signalman position. (See Appendix "Z") An employee force assigned will be notified by certified letter of his/her assignment and must report within ten (10) calendar days of receipt of the letter...’ ”

At the time of incident, the Claimant worked as a Relief Maintainer on Gang 5763. On 11/18/16, the Claimant was awarded a position on Gang 8617. Per Rule 41, the Claimant was held on his former position, which was also put up for bid. The Claimant’s former position was advertised for two bulletin cycles without receiving any qualified bids. Under Rule 43, the Carrier reviewed the seniority roster and determined that the Claimant was the junior Class “1” employee for the opening, who was then forced assigned to Gang 5763 on Friday, December 16, 2016. The Carrier stopped paying the Rule 41 penalty, reasoning that the Claimant now owned the position on Gang 5763. The Carrier provided a Rule 41 penalty allowance (\$260) for the thirteen days from 12/4/16 – 12/16/16.

While continuing to work the force assignment on Gang 5763, the Claimant was awarded a position on Gang 2686 on 12/30/16. Per Rule 41, the Claimant was again held on his position in Gang 5763. On 1/13/17, the Claimant was awarded a position on Gang 8197. The Carrier continued to hold the Claimant on Gang 5763 until 1/30/17, where the Claimant was then allowed to report to his position on Gang 8197. The Carrier provided a Rule 41 penalty allowance (\$320) for the sixteen days from 1/15/17 – 1/30/17. In total, the Carrier provided the Claimant with \$580 of Rule 41 penalty allowance.

In summary, the Organization argues a) the Claimant was held on Gang 5763 from 11/18/16 – 1/30/17 for a total of 58 days beyond the 15 days allowed without penalty, for a total of \$1,160 in Rule 41 penalty allowance. The Carrier compensated the Claimant \$580 of penalty allowance, but still owes the Claimant an additional \$580 that it has refused to pay, b) although the Carrier argues it force assigned the Claimant back to the position on Gang 5763 under Rule 43, the Claimant was never actually released from Gang 5763 and could not be reassigned back to a position he was never released from, and c) arbitral precedent supports the Organizations position.

In summary, the Carrier argues a) the Claimant was paid the correct Rule 41 penalty allowance, b) the position the Claimant was being held on was put up for bid, and when the position failed to receive a valid bid, the Carrier exercised its right under Rule 43 to force the junior Class 1 employee, who happened to be the Claimant, c) the Claimant was not forced to a position that he already owned; he was forced to a vacant position based upon the requirements of Rule 43. The fact that he was being held on the position is separate and apart from the Carrier's rights to force an employee to the position, d) the Organization failed to satisfy its burden of proof obligation, and e) the remedy demand is excessive.

After a thorough review of the record, the Board finds the Organization failed to meet its burden. In the instant case, the Carrier abided by the language of Rule 41 and Rule 43. The fact that an employee is being held on a position does not negate the Carrier's right under Rule 43 to force assign that employee to the position when no valid bids are received, and that employee is the junior Class 1 employee with seniority on that district working on a gang. Such is the case here.

The Organization provided the Board with Third Division Award 40473 as guidance in this matter. Although the Board found the Award to be interesting and informative, we did not find it controlling. The instant case has its own set of facts and circumstances, which set it apart from the cited offering. Unlike Award 40473, the

instant case not only involves penalty allowances for being held on an assignment, but also includes the Carrier's right to force assign a junior employee when no valid bids are received for a vacancy under Rule 43.

Although the Board may not have repeated every item of documentary evidence or all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

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 January 2020.