

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43905
Docket No. SG-44962
20-3-NRAB-00003-180419**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Illinois Central Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of D. Burgess, for the difference in earnings between the position he was held on and the position he displaced to, from January 17, 2017, until he is released to displace, account Carrier violated the current Signalmen’s Agreement, particularly Rule 20, when the Claimant was displaced from his awarded position on January 17, 2017, and Carrier denied him his displacement rights and improperly continued to hold him on his position. Carrier’s File No. IC-BRS-2017-00009. General Chairman’s File No. IC-007-17. BRS File Case No. 15826-IC. NMB Code 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 Claimant was working a position in the Kirk Yard when he was awarded a position on a construction gang on January 6, 2017. The Carrier held the Claimant on his Kirk Yard position, during which time he was displaced from the construction gang position by signalman Dwayne Wright on or about January 17, 2017. The Claimant exercised his displacement rights on January 20, 2017. However, he continued to be held on his Kirk Yard position until January 31, 2017, when he was released to report for his new assignment.

On February 6, 2017, the Organization filed a claim on behalf of Mr. Burgess, alleging that the Carrier violated the Agreement when it failed to permit him to exercise his displacement rights as set forth in Rule 20. The Carrier denied the claim on the basis that it had properly held the Claimant on his Kirk Yard position in accordance with Rule 31(d). The parties having been unable to resolve the dispute through the grievance process, the matter was appealed to the Board for a final and binding decision.

The Organization contends that under Rule 20, after asserting displacement rights, an employee must report for duty within ten days, unless prevented from doing so by personal sickness or injury or when on a previously granted leave of absence. The Claimant was not prevented from reporting for duty by any of those reasons, but because the Carrier continued to hold him on his prior position in the Kirk Yard. The Carrier could rightfully hold the Claimant after he was awarded a position by bulletin. There is no rule that allows the Carrier to hold an employee on a position when a displacement is involved, and it had no right to hold the Claimant after he was displaced from the awarded position. The language of Rule 20 is clear and unambiguous. The Claimant should have been permitted to report to his displaced position immediately, and he should be made whole by being paid an amount equal to any difference in pay he may have incurred as a result of the Carrier's violation of the Agreement. The Carrier's position is that the Organization has failed to meet its burden to prove that there has been a violation of the Agreement. The Organization's reliance on Rule 20 is misplaced; the Agreement was not violated. The Carrier properly held the Claimant on his Kirk Yard position in accordance with Rule 31(d), which makes provision for employees to be held on their old positions for up to twenty

working days. The Claimant was given displacement rights on January 20, 2017, in accordance with Rule 20.

Since this claim was filed, the Board has addressed this exact same issue between these same parties. In PLB No. 6785, Award No. 72 (2017), the Board with exactly the same situation: an employee in the Kirk Yard was awarded a position, but held over by the Carrier instead of being released immediately to assume the new position. While the employee was being held over, he was displaced from the new position by a senior employee. The employee then exercised his displacement rights to bump into another position, but the Carrier continued to hold him in his original position for another week before releasing him from his original assignment to report to his new assignment. As in that case, the instant dispute calls into question the interplay between Rule 20(a) and Rule 31(d). As in that case, the Organization recognizes the Carrier's right under Rule 31(d) to hold employees in their original positions for short periods of time before releasing them to report their new assignments. Rule 31(d) states:

“(d) If a successful bidder is not placed on the new position after ten (10) working days of the assignment, such employee will receive \$10.00 per workday thereafter, until placed on the new assignment.

A successful bidder will be placed on the new position within twenty (20) working days of the date of the award.

NOTE: The intent of Rule 31(d) is to promptly move an employee to the new position and that normal application should achieve this intent within the twenty (20) working days period. Should issues arise concerning the application of Rule 31(d), the parties agree to meet and review the circumstances of each individual case.”

RULE 20(a) provides:

“Employees whose positions have been abolished, or who have been displaced, must assert displacement rights if they are required to do so by the provisions of the preceding rule, within ten days from date of abolishment or displacement, except employees on a previously granted

leave of absence or employees previously on a temporary position will be privileged to assert their displacement rights within ten days after expiration of leave of absence or when released from the temporary position. An employee on vacation will be considered as on a leave of absence.”

The instant dispute presents the same fortuity of circumstances that the Board addressed in Award No. 72. In that case, the Board observed:

“Rule 31(d) establishes a balance between an employee’s desire to move as soon as possible to his new position and the Carrier’s need to maintain uninterrupted operations. Rule 31(d) recognizes that it may not be possible to find an immediate replacement for the employee who has been awarded a new position, so it permits the Carrier to hold the employee over temporarily. At the same time, the rule encourages the Carrier to release employees to their new positions: it establishes a penalty payment for employees who are held over for more than ten working days, and it caps the maximum amount of time that an employee can be held over at twenty working days.

Ultimately, the Board held:

“From the Board’s perspective, the two rules are not mutually exclusive under the facts presented in this case: the Claimant was properly held over under Rule 31(d) *and* he was permitted to exercise his displacement rights under Rule 20(a) in a timely fashion. The Carrier’s need, and right, to hold the Claimant over did not change simply because he was himself displaced a few days later, and it would be inappropriate to find that the accident of timing presented by the facts in this case deprived the Carrier of the flexibility it needed—and which was granted to it in Rule 31(d)—while finding a replacement for the Claimant in the Kirk Yard position he was vacating.”

The Board concluded that there was no violation of the Agreement. This case presents the same scenario as that presented in Award No. 72, and the Board will follow that precedent here.

The Board notes, however, that the Claimant was not displaced from the position he was awarded on January 6 until January 17, eleven days later. Under Rule 31(d) successful bidders who are not placed in their new positions after ten days are entitled to a payment of \$10.00 per day until placed on the new assignment. The Claimant was entitled to the payment after ten days. He was displaced from the new position on the eleventh day, so he was entitled to payment of \$10.00 for that one day. The Claimant exercised his displacement rights into a second new position on January 20, but he was held over eleven days, until January 31, before being released to report to his new assignment. He is entitled to a second \$10 payment for that eleventh day as well, for a total of \$20.00. If he was not already paid that amount—the record does not indicate—he should be so paid now.

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.