

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44604
Docket No. SG-46114
22-3-NRAB-00003-200287**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“Claim on behalf of R.B. Ryan, for 8 hours of pay at her straight-time rate of pay for each day she was denied the work opportunity on second trick and 8 hours at her time and one half rate of pay for each day she was required to work third trick, beginning on September 11, 2018, continuing to December 18, 2018; account Carrier violated the current Signalmen’s Agreement, particularly Rule 12, when it failed to advertise a vacant second trick Assistant Foreman’s position. Carrier’s File No. 154512-TC. General Chairman’s File No. AEGC-20191. BRS File Case No. 16155-NRPC(N). NMB Code No. 117.”

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 this dispute, Claimant was assigned to the Third Trick Assistant

Foreman on the C&S Trouble Desk headquartered at the Providence, Rhode Island, MOW Base. On September 11, 2018, a Second Trick Assistant Foreman position became vacant. The Carrier did not bulletin the vacancy.

After attempts to resolve the matter informally were unsuccessful, the Organization filed a claim with Division Engineer Brody LaBuick. The claim was dated October 16, 2018, and officially received on November 13, 2018, following confusion over the address. There is no dispute that the Second Trick position was bulletined and awarded to Claimant on December 17, 2018. The Carrier did not respond to the initial claim.

In a letter dated February 14, 2018, the Organization filed an appeal, contending that the Carrier never responded to the first level claim. The Carrier denied the appeal by letter dated April 11, 2018. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Organization contends that the Carrier committed a fatal procedural error when it failed to respond to the Organization's claim. Thus, it contends, in accord with Rule 56 of the parties' Agreement, the claim must be allowed as presented and the merits of the claim may not be considered. Rule 56(a) provides:

RULE 56 – CLAIMS AND GRIEVANCES

- (a) All grievances or claims other than those involving discipline must be presented, in writing, by the employee or on his behalf by a union representative, to the Division Engineer within sixty (60) calendar days from the date of the occurrence on which the grievance or claim is based. Should any such grievance or claim be denied, the Division Engineer shall; within sixty (60) calendar days from the date same as filed, notify whoever filed the grievance or claim (employee or his representative) in writing of the reason for such denial. If not so notified, the claim shall be allowed as presented.

With respect to the merits, the Organization contends that Rule 12 of the Agreement establishes the timeliness when new positions and permanent vacancies will be advertised. Claimant was on a Third Trick Assistant Foreman position on the C&S Trouble Desk but desired a more favorable work assignment. Thus, Claimant notified the Organization of Carrier's failure to advertise the vacant Second Trick Assistant Foreman position, thereby denying her the opportunity to work the vacated

Second Trick Assistant Foreman position. Rule 12(a) provides,

RULE 12 – BULLETIN AND ASSIGNMENT

- (a) New positions and permanent vacancies will be advertised in the appropriate seniority district within 14 calendar days from the date they occur. The advertisement will indicate the position, title, headquarters, assigned territory, rate of pay, tour of duty, rest days and brief description of duties (See Supplement for format). Advertisements will be posted for seven (7) calendar days at the headquarters of all employees entitled to consideration and employees desiring advertised positions must file written bids therefor within this seven (7) day period. All furloughed employees will be considered automatic bidders for positions bulletined on the seniority district for which no bids are received from active employees and which do not require a change in residence. A copy of the advertisement will be furnished to the involved Local Chairman.

The Carrier contends that after it received the Organization's claim, it posted the vacancy on December 6, 2018, and awarded it to Claimant on December 18, 2018. The Carrier contends that there was no need to answer the claim in writing because the request had been granted.

With respect to the merits, the Carrier contends that it has the managerial prerogative to choose to blank a position rather than advertise it and it would have been within its rights to simply cover this position with a management employee.

The Carrier contends that the Organization's requested remedy has no basis in the Agreement and is not related to any damages suffered by Claimant. Despite being awarded the position sought, Claimant pursued the claim seeking further monetary relief with no basis in the Agreement. The Carrier contends that even if Claimant were on the second shift as she requested, she could have only earned up to four hours on overtime on the third shift on any day that the Carrier decided to fill the vacancy on overtime.

The Carrier failed to timely respond to the claim as required by the Agreement. Although the Carrier acted in response to the claim, the Agreement unequivocally requires the Carrier shall give notice in writing of the reason for the denial within

sixty days. Neither Claimant nor her representative was notified in writing of the reasons for the Carrier's decision not to award her request for pay.

Rule 56 of the Agreement is also unequivocal that the claim shall be allowed as presented if notification does not so occur. When the language of the parties' agreement is clear and unambiguous, this Board need look no further than the negotiated language agreed to by the parties to resolve their dispute. Third Division Award 43615. Thus, the claim shall be allowed.

The Organization contends that Claimant was improperly denied assignment to the Second Trick from September 11, 2018, until December 18, 2018. Claimant was already paid at the straight time rate for the hours she worked during this period. Pursuant to operation of Rule 56, she is entitled to the requested remedy for each day she was required to work on the Third Trick during the claimed period, less compensation already paid for these hours. The Board orders the Carrier to make Claimant whole in accordance with these findings.

AWARD

Claim sustained in accordance with the Findings.

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 29th day of October 2021.

CARRIER MEMBERS' DISSENT

to

THIRD DIVISION AWARD 44604 – Docket 46114

(Referee Kathryn VanDagens)

The Carrier dissents because there is no basis in the Agreement for the remedy requested by the Organization and awarded by the Majority here. As boards have noted in the past, pay as presented is not appropriate where there is no foundation in the Agreement for the requested remedy. As outlined in Amtrak's submission to this Board, that is the case here. The Agreement places a limit of four hours on how much overtime someone in the Claimant's specific position could have earned on any given date. The Claimant, who was fully employed and earning the same amount of money she would have in her desired shift, suffered no actual financial loss and certainly would not have worked an additional eight hours a day had she been in her desired shift. This remedy is a windfall that will encourage claims requesting remedies not based in actual losses or provided for in the Agreement.

For this reason, the Carrier respectfully dissents.



Angela Heverling
Carrier Member

Kristin Beckner

Kristin Beckner
Carrier Member