Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
SECOND DIVISION

Award No. 14144
Docket No. 14034
16-2-NRAB-00002-140069

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen-Division of TCU/IAMAW
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(BNSF Railway Company

STATEMENT OF CLAIM:

"1. That the Burlington Northern Santa Fe violated the terms of the February 1, 2006 Agreement, specifically Rule 34, when Carman R. Gehring was denied the right to work his regular assignment on April 1, 2013.

2. That accordingly, the Carrier be ordered to compensate the Claimant eight (8) hours pay at the straight time rate of pay for April 1, 2013."

FINDINGS:

The Second 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.

Initially, the Board will address the Carrier's contention that the Board lacks jurisdiction in this dispute in that the Organization has cited Rule 34, the Time Limit Rule, in its Statement of Claim, and did not claim a violation of this Rule during the

handling of the case on the property. The Board finds that the claim before the Board is materially identical to that handled on the property and does not find that the inclusion of Rule 34 creates a jurisdictional bar to handling the case on its merits.

The Claimant in this case was regularly assigned as a Carman Welder at Globeville Yard, with a tour of duty from 7:00 A.M. to 3:00 P.M. On Sunday, March 31, 2013, the Claimant worked an overtime assignment on the Rapid Responder from 6:00 P.M. to 6:00 A.M. on April 1, 2013. When the Claimant reported for his regular assignment at 7:00 A.M., he was advised that he would not be permitted to work and was sent home since this would involve working in excess of 16 hours in a 24 hour period. The Carrier's decision in this case was governed by the Mechanical Department's October 30, 1998, policy, which reads, in pertinent part, as follows:

> **"SAFETY DAILY HOUR LIMITATION – In order to reduce the risk or employees endangering themselves by working themselves excessively in a fatigued condition, a maximum daily limit of 16 hours. Exceptions to this would include emergency on-line repairs and train service completion beyond end of shift."**

Initially, the Organization strongly disagrees with the Carrier's "arbitrary, unilateral policy" contending that the Carrier utilizes such policy at "its whim with no consistency whatsoever." Relative to the specific claim before the Board, the Organization states that the Claimant is entitled to be compensated for the earnings of his regular assignment that he could not work due to application of the policy, citing the Note to Rule 6(g) of the Agreement, which reads as follows:

> **"NOTE: in the application of Rules 6(g) and 8(a), when an employee is prevented from working his regular assignment because of the application of Company policy, the employee will be paid for any portion of his regular assigned shift that the employee is not allowed to work."**

The Organization points out that this note is unique to this Carrier and was added to the Collective Bargaining Agreement as part of the January 23, 2003 National Agreement. It is the Organization's position that under the clear language of the Note, the Claimant is entitled to be paid for the hours of his regular assignment since he was prevented from doing so due to the application of the Carrier's policy.

Contrariwise, the Carrier asserts that the Mechanical Department guidelines have been in effect for over 15 years and were issued solely for employee safety concerns. The Carrier has cited two Second Division Awards on another property and Award No. 15 of PLB 6551, between the parties now at bar, stating that such Awards have recognized the Carrier's right to establish a policy which precludes employees from working more than 16 consecutive hours because of safety concerns. Relative to the Note to Rule 6(g), the Carrier submits that such rule only has application in those circumstances where the Carrier requires employees to work as opposed to the situation involved herein, where the Claimant voluntarily agreed to work the overtime assignment. In addition, the Carrier posited that the overtime assignment on the Rapid Responder is governed by a separate agreement relative to the manner in which vacancies are filled and is not subject to the Note to Rule 6(g).

Initially, the Board agrees with the Carrier that it has a right to establish reasonable safety rules and policies to protect its employees. While the Organization implies that the Carrier does not uniformly apply the Mechanical Department Policy, it has failed to proffer any evidence of this allegation nor has it shown the relevance of such argument to the present case. However, the Board does find that the Note to Rule 6(g) specifically address the situation involved herein, in that the Claimant was "prevented from working his assigned shift because of the application of Company policy." While the Carrier contends that the Note does not apply to situations involving voluntary acceptance of overtime nor does it apply to the Rapid Responder assignment, the Board's close perusal of the record does not show that these specific arguments were raised by the Carrier during the handling of the case on the property. Accordingly, the Board did not consider same in its decision in the case at bar. Relative to the Awards cited by the Carrier, especially the Award between the same parties herein, the Board finds that these Awards were issued prior to the inclusion of the Note in Rule 6(g) and accordingly are not on all fours with the claim before the Board.

The Board finds that under Rule 6(g), the Claimant is entitled to "be paid for any portion of his regular assigned shift that the employee is not allowed to work", which in this case, is eight (8) hours at the straight time rate as claimed.

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 Second Division

Dated at Chicago, Illinois, this 20th day of December 2016.