

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29758
Docket No. SG-30041
93-3-91-3-492

The Third Division consisted of the regular members and in addition Referee Dana Edward Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Norfolk Southern Railway Company

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Systems Railroad:

Claim on behalf of Signal Maintainer, J.E. Boyce, Jr., assigned to 2nd Shift Signal Maintainer position Inman Retarder Yard, Atlanta, GA, assigned work days Thursday thru Monday, rest days Tuesday and Wednesday, for the following:

- (a) The Signalmen's Agreement was violated, particularly Rule 30 when Signal Maintainer J.E. Boyce, Jr. was not assigned so that he would have a 40 hour work week when he bid from Signal Gang to 2nd Shift Signal Maintainer position at Inman Yard on bulletin SS-90-16 and assigned on bulletin SS-90-17 to report on August 13, 1990.
- (b) Carrier now be required to compensate Signal Maintainer J.E. Boyce, Jr. for 20 hours straight time as the Signaller rate of pay for the 20 hours he lost in the first half of August 1990 because he was not permitted to report on Friday August 10, 1990 instead of August 13, 1990, and because he was not allowed to have 40 hours for the work week as guaranteed by Rule 30(c)." Carrier file SG-ATLA-90-34. G.C. File Sr-6090. BRS Case No. 8434.SOU.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Claimant was assigned to a Signal Gang which worked ten (10) hours per day, Monday through Thursday, rest days Friday, Saturday and Sunday. The position of Signal Maintainer, Second Shift, Inman Yard, Atlanta, was advertised by Bulletin SS-90-16 on July 18, 1990. Claimant applied for the position and was assigned same on August 1, 1990. The effective date of the assignment was August 13, 1990.

Agreement Rule 30, pertinent to this dispute, states:

"RULE 30

WORKING HOURS, DAYS AND WORK WEEK
(Revised- -effective September 1, 1949)

- (a) Except by mutual agreement, regularly established working hours will not be reduced below eight (8) per day, and established working days will not be reduced below five (5) per week to avoid making force reductions, except in weeks in which holidays designated in Rule 31 occur, and in such weeks the number of days may be reduced by the number of such holidays; provided if there be a change in the basis of the number of hours in a day or week after which punitive overtime is to be paid, this paragraph (a) shall be null and void.
- (b) The expressions 'positions' and 'work' when used in this agreement refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employees.

- (c) The carriers will establish effective September 1, 1949, for all employees, subject to the exceptions contained in Article II of the Chicago Agreement of March 19, 1949, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the carriers' operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of the Chicago Agreement of March 19, 1949.

* * *

(6) Nonconsecutive Rest Days:

It is the carrier's obligation to grant a work week with two consecutive days off, but when an operating problem is met which may affect the consecutiveness of the rest days of positions or assignments covered by paragraphs (c)(2), (c)(3) and (c)(4), the following procedure shall be used:

* * *

(12) Guarantees:

Except to the extent that the coverage of existing guarantees was extended to certain employees covered by Article II, Section 1(e) of the March 19, 1949 agreement, the adoption of the 'shorter work week' rule in Article II, Section 1 of that agreement did not create a guarantee of any number of hours or days of work. The adoption of this paragraph shall be without prejudice to the determination of the question of whether or not a guarantee exists."

On or about August 6, 1990, the Carrier informed Claimant that he was going to a position with work week Thursday through Monday, rest days Tuesday and Wednesday. After enjoying the Saturday and Sunday days off of his old assignment, Claimant reported to work on Monday, August 13, 1990, the last day of the work week of his new assignment, and was duly compensated for that day. Because the following two days, Tuesday August 14 and Wednesday, August 15, 1990, were the assigned rest days of his new work week, he was not compensated for either of those days.

On September 6, 1990, the Organization filed a claim contending that "due to the Carrier not assigning Claimant on August 14, 1990, to second Trick position, caused Claimant to lose twenty (20) hours of pay for the month of August."

On November 2, 1990, Carrier's Manager-Personnel & Labor Relations denied the claim stating: "Mr Boyce knew a week in advance that he was going to a position which required a change in his rest days; and if he was concerned with losing time due to the change, he could easily have brought this to the attention of his supervisor or myself and we would have gladly worked this matter out for him."

The Organization asserts that the Carrier "could have prevented Claimant from losing twenty (20) hours work in the first half of August 1990 if he had been permitted to report to his new assignment on August 10, 1990 instead of being required to report on August 13, 1990." The Organization maintains that "the Carrier, as the assigning party, has the responsibility to see that no employee is violated and receives all rights under the Agreement." The Organization further submits that "where a rule states that the Carrier will have control in assigning an employee and, that employee lives up to his responsibility under those provisions, then the Carrier is at fault, and has breached the contract."

The Carrier submits that "the effective date of any assignment is subject to change based on varying factors in connection with a particular job or shift change." Further, the Carrier reasserted that "Mr. Boyce knew a week in advance that he was going to a position which required a change in his rest days; and if he was concerned with losing time due to the change, he could easily have brought this to the attention of his supervisor or myself and we would have gladly worked this matter out for him." The Carrier maintains that it "did not disallow Mr. Boyce from working a 40-hour week as claimed." Further, Carrier argues that "the claim is not supported by the Rules cited, and there has been no violation of the Agreement."

The Claimant bid on a position which did not originally list the assigned rest days of Tuesday and Wednesday. However, one week prior to commencing his newly assigned position, Claimant was apprised of the schedule. He took no exception and said nothing about any concerns regarding starting the new assignment on the last day of the workweek. Carrier reasonably points out that if the Claimant was concerned about not "getting enough hours" for the first half of August, he should have notified his supervisor or another Carrier official, in an effort to resolve the situation. Instead, he said nothing and merely waited to file this claim thirty-seven (37) days later, in an effort to recover the "lost wages."

Carrier retains a certain managerial discretion under the Agreement regarding starting dates of assignments, subject to the implicit obligation to exercise that discretion in a reasonable and nondiscriminatory manner. There is not a shred of evidence that Carrier wilfully or intentionally deprived Claimant of any Agreement right or otherwise treated him unfairly. So far as this record shows, if Claimant had spoken up instead of lying in wait to file a claim, Carrier might well have made the effort to accommodate his professed desire to start the new job on August 10, 1990. It is unfortunate that the Claimant did "lose" wages, however, there are some perceived "wrongs" for which no remedy is available. We must find that Carrier did not violate Rule 30 of the Agreement nor abuse its discretion thereunder. Therefore, this claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 20th day of September 1993.