

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31644
Docket No. SG-31505
96-3-93-3-487**

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Chicago and North Western Transportation Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago & North Western Transportation Co. (CNW):

Claim on behalf of D.W. Hockens, R.W. Annear and R.L. Wagner for payment of 30 hours each at one-half their straight time rates, account Carrier violated the current Signalmen's Agreement, particularly Rules 5(k), 15(b) and 24, when it required the Claimants to work on their rest days of March 16, 17 and 18, 1992, and refused to compensate the Claimants at the time and one-half rate for such service. Carrier's File No. 79-92-49. General Chairman's File No. S-AV-117. BRS File Case No. 9106-CNW."

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 or 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 waived right of appearance at hearing thereon.

The parties involved in this case have in their negotiated rules agreement a provision known as **RULE 24 - VARIATION FROM 8 HOUR DAY - 5 DAY WEEK**. This Rule 24 reads as follows:

"Rule 24 - VARIATION FROM 8 HOUR DAY - 5 DAY WEEK

At the request of management or at the request of the employees, when the majority of the employees in a single crew are agreeable thereto and conditions permit, their hours of assignment and days worked per week may vary from the ordinary 8 hour day, 5 day week, either long or short. For example, the crew may work four 10-hour days, may work four 9-hour days with four hours on the 5th day or the crew may work straight through; i.e., perform service on 10 straight days, accumulating rest days and observing four rest days at the end of the ten day work week. A crew working four 10-hour days will be credited with five days for vacation qualifying purposes.

Another example of variation from the regular work week would be to establish a work week for such employees beginning on Monday and working straight through, including Saturday and Sunday, thru the following Tuesday, 9 hours per day for eight days and 8 hours on the ninth day. The crew's rest days would then be Wednesday, Thursday, Friday, Saturday and Sunday, with the crew reporting to work at the scheduled starting time on Monday morning and again work for a 9-day period as outlined above."

The Claimants in this case were members of the Signal Travel West Crew No. 1 which normally works out of Carroll, Iowa. During January, February and the first half of March, 1992, this crew was utilized on a special work project in Wyoming. By local, verbal agreement of the parties, the work schedule of the crew was modified to accommodate the service needs of the Carrier and the personal needs of the crew members. This work schedule modification was effected under the terms and conditions of Rule 24 quoted above. There was no written understanding. Everything that was arranged was done verbally between the crew members and the Supervisor. The work/rest day periods varied substantially throughout the special work project.

The record shows that the crew worked from January 10th through January 17th (8 days); they had off days from January 18th through January 27th (10 days); they worked from January 28th through February 8th (12 days); they had off days from February 9th through February 20th (12 days); they worked from February 21st through February 27th (7 days); they had off days from February 28th through March 4th (6 days); they worked from March 5th through March 12th (8 days); they had off days on March 13th, 14th and 15th (3 days) and resumed their regular four 10-hour day work schedule in Iowa beginning March 16, 1992.

The claim in this case asks for payment of the time and one-half rate of pay for March 16, 17 and 18, 1992, in lieu of the straight-time rate already allowed for the work performed on those dates. The claim is based on the assertion that following the extended 8-day work schedule from March 5th through March 12th, the Claimants should have had a 6-day rest period from March 13th through the 18th. Therefore, the Organization contends that the service performed on March 16, 17 and 18, 1992, was, in effect, service performed on the Claimants' rest days and should have been paid for at the time and one-half rate.

There is no disagreement between the parties relative to the fact that a local, verbal agreement was made to effect the deviations from the normal work schedule of the crew. The case record contains no first-hand account or statement from any of the crew members relative to their understanding of the verbal agreement which had been reached with the Supervisor. The case record does contain an after-the-fact statement from the C&S Manager which states, in part, as follows:

"The point being, the Carrier and the Crews had a verbal agreement that the sessions would be adjusted for everyone's convenience. When the work ended and we moved the crews back to the West Iowa their session ended on Thursday the 12th (the day they traveled back). In order for them to get the proper hours in for the second half of March we had to start them back to work on the 16th. This was due to the fact that they were going back to 10-hour days and not working sessions. If they had taken their 6 days off they would have been short time for the second half of March."

An examination of the case record reveals that the claims for the "amended time" which were submitted by the Claimants for March 16, 17 and 18, 1992, do not indicate thereon the date on which they were actually submitted. The "amended time" claims were denied by the C&S Manager on May 1, 1992. The Organization eventually, in a letter dated June 24, 1992, initiated a claim on behalf of the Claimants alleging that

Carrier violated Rules 5(k), 15(b) and 24 when it refused to allow Claimants the time and one-half rate for the service performed on March 16, 17 and 18, 1992, which, the Organization contends, were Claimants' rest days which should have followed the 8-day work period March 5th through March 12th.

Rule 5(k) reads as follows:

"Rule 5 - WORK WEEK

The expressions 'positions' and 'work' used in this rule refer to service, duties, or operations necessary to be performed the specific number of days per week, and not to the work week of individual employees.

(a) General - Subject to the exceptions contained in this agreement, there is hereby established 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 operational requirements; so far as practicable the days off shall be Saturday and Sunday. The work week is subject to the following provisions:

* * * * *

(k) Service on Rest Days - Service rendered by employees on assigned rest days shall be paid for under Call Rule 15(a) and (b) unless relieving an employee assigned to such day in which case they will be compensated on the same basis as the employee relieved. Regular assigned rest days shall not be changed except after five days advance notice."

Rule 15(b) reads as follows:

"Rule 15 - WORK OUTSIDE REGULAR HOURS

(b) Notified To Work Outside Regular Hours: Employees notified prior to completion of their assignment to report for work outside of regular working hours will be paid a minimum allowance of two hours at rate and one-half. If held longer than two hours they will be paid at rate and one-half, computed on the actual minute basis."

From the Board's review of the circumstances in this case, it is our conclusion that neither Rule 5(k) nor 15(b) have any application to the fact situation as it can be determined from the case record. The parties agreed, albeit verbally and locally, that the normal work/rest day schedule of this crew would be temporarily modified as permitted by the provisions of Rule 24. There is no proof in this case record to establish, even in general terms, what the planned work/rest day periods would be during this temporary work schedule. There is no proof in this case record to establish as fact that the claim dates were "assigned rest days" for the Claimants. The statement from the C&S Manager which is part of the on-property record of the case stands alone and unrefuted. While it is difficult for the Board to interpret a verbal, local agreement, the evidence of record which can be reviewed and interpreted in this case record supports the Carrier's position. The claim as presented is, therefore, denied.

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 29th day of August 1996.