

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31814
Docket No. SG-31880
96-3-94-3-207**

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: (
(Southern Pacific Transportation Company**

STATEMENT OF CLAIM:

"Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co. (SP):

CASE NO. 1

Claim on behalf of W.B. Thomas for payment of eight hours at the straight time rate for each day from September 7 to September 18, 1992, and on behalf of E.O. Rosebure for payment of four hours at the straight time rate for each day from September 7 to September 18 1992, account Carrier violated the current Signalmen's Agreement, particularly Rule 76, when it failed to assign an employee to relieve Claimant Thomas' position during his vacation period. Carrier's File No. Sig-93-7. General Chairman's File No. SWGC-525. BRS File Case No. 9302-SP.

CASE NO. 2

Claim on behalf of L.K. Wymore for payment of eight hours at the straight time rate for each day from October 19 to October 30, 1992, and on behalf of J.T. Pointer for payment of four hours at the straight time rate for each day from October 19 to October 30, 1992, account Carrier violated the current Signalmen's Agreement, particularly Rule 76, when it failed to assign an employee to relieve Claimant Wymore's position during his vacation period. Carrier's File No. Sig-93-8. General Chairman's File No. SWGC-527. BRS File Case No. 9303-SP."

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 were given due notice of hearing thereon.

These claims involve an alleged violation by Carrier of the provisions of Rule 76 which reads as follows:

"RELIEVING FOREMEN AND MAINTAINERS

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When Signal Maintainers or Signal Maintenance Foremen are off for periods that exceed one week in duration, they will, if relieved, be relieved by the Relief Signal Employee; and if not available, the senior qualified employee of Class 3 assigned to the Signal or Maintenance Gang.

The Carrier will make every effort to provide vacation relief on Signal Maintainer positions when the incumbent is off duty longer than one week."

The respective situations show that Claimants Thomas and Wymore were each on paid vacation during the time periods as outlined in the Statement of Claim supra. Claimants Rosebure and Pointer were each employed on their regularly bulletined positions during the claim periods here involved. The sole basis of the claims as presented and progressed by the Organization centers on the assertion that Carrier somehow violated Rule 76 when it failed to assign a specific employee to relieve the vacationing employees.

From the Board's review of the Agreement provisions and after considering the arguments of the parties, it is concluded that there has been no violation of any Agreement provision by the Carrier. The language of Rule 76 is permissive in nature. It outlines procedures which will be applicable IF the vacationing employee is relieved and provides that Carrier will make "every effort" to provide relief. It does not mandate that vacation absences must be filled, nor does it define to what extent Carrier must go to make an effort to provide relief. Such rule language, absent convincing probative evidence of misfeasance on the part of the Carrier, does not create an absolute enforceable right.

The National Vacation Agreement, on the other hand, does establish an enforceable right which is not present in the Organization's presentation and progression of this case. In Articles 6 and 10(b) of that Agreement, we read:

- "6. The carrier will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief workers."
- "10(b). Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

There is no argument by the Organization that Claimants Rosebure or Pointer performed more than 25% of the vacationing employees' duties or were in any way burdened by the performance of such work. In fact, the record shows that they each worked only eight hours on each of the claim dates. Nor is there any argument that the vacationing employees were in any way burdened upon their return to their regular duties. The Board has consistently held that in the absence of proof of such burdening or performance of more than 25% of the vacationing employee's duties, no additional payment is required for either the vacationing employee or the employee who performs some of the vacationing employee's duties.

On the basis of the relative convincing force of evidence and argument as found in this case, there is no justification for the claims as presented and they are 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 26th day of December 1996.