

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32795
Docket No. SG-32950
98-3-96-3-316**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Burlington Northern Railroad**

STATEMENT OF CLAIM:

"Claims on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad (BN):

A. Claim on behalf of the members of Local 119 to have Bulletin No. 95-48D cancelled and the position of CTC Maintainer at Lincoln, Nebraska (hump yard) re-bulletined with Saturday or Sunday as the rest day, account Carrier violated the current Signalmen's Agreement, particularly Rules 3, 8, 41 and 45, when it advertised this position with a rest day of Tuesday or Wednesday. Carrier's File No. SIA 95-07-06AA. General Chairman's File No. D-19-95. BRS File Case No. 9895-BN."

"B. Claim on behalf of V.H. Yost for payment at the time and one-half rate for all work performed on Saturdays and Sundays and payment of eight hours at the straight time rate for each Tuesday and Wednesday, beginning April 4, 1995, and continuing until this matter is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rules 3, 8 and 45, when it required the Claimant to observe his days off on Tuesday and Wednesday instead of Saturday and Sunday on the position of CTC Maintainer at Lincoln, Nebraska (hump yard). Carrier's File No. SIA 95-08-29AA. General Chairman's File No. D-31-95. BRS File Case No. 9896-BN."

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 core of the issue in this case are Rules 3 and 45 of the current Agreement between the Parties. Those Rules read in pertinent part as follows:

"RULE 3. WORK WEEK

A. General. Consistent with the Forty-Hour Work Week Agreement of September 1, 1949, the work week for all employees, subject to the exceptions contained in this agreement, shall be 40 hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's occupational requirements; so far as practicable, the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this agreement.

B. Five-day positions. On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

* * *

RULE 45

* * *

D. Monthly-rated employees shall be assigned one regular rest day per calendar week (Sunday, if possible). Overtime rules applicable to other employees who are subject to the terms of the Signalmen's Agreement will apply to service which is performed by monthly rated employees on such assigned rest day.

* * *

I. The method of operation to be used for all monthly rated maintainers shall be on the following basis:

The full workdays shall be Monday through Friday, with the 'rest' and 'subject' to call days alternated on adjacent districts. . . ."

On March 16, 1995, Carrier advertised the position of CTC Maintainer with headquarters at Lincoln, Nebraska (hump yard). Carrier advertised the position with regular rest days of Tuesday and Wednesday. On March 30, 1995, the Organization submitted a claim in which it contended that Carrier had advertised the position with improper rest days. The claim was denied and subsequently progressed in the usual manner including conference on the property on October 26, 1995, after which it remained unresolved.

The issues in this case are not a matter of first impression. In a recent Award [Public Law Board No. 5565, Award 8 - Northeast Illinois Regional Commuter Railroad Corporation (METRA)/ Brotherhood of Railroad Signalmen] the Board considered a case nearly precisely on point with the one before this Board. In that instance the Board held:

"Rules 15 and 51 [nearly identical to Rules 45 and 3 in this case] read together establish the premise that days off for monthly rated five-day positions should ordinarily be Saturday and Sunday, if possible and so far [as] practicable in accordance with Carrier's operational requirements."

In this case, the Carrier protested the applicability of Rules 3 and 45 throughout the processing of the claim. Not until a little more than two weeks before the conference on the property did the Carrier suggest that there was an operational necessity which required Carrier to assign other than Saturday or Sunday as a rest day/subject to call day. At no time during the processing of the claim did Carrier offer concrete evidence to support such an operational necessity.

Carrier has also protested that the monetary remedy sought is excessive. That argument has some validity. Had Claimant been properly assigned he would have received time and one-half for any Saturday or Sunday on which he worked. Thus, he

is entitled to be compensated at the time and one-half rate for each Saturday or Sunday he worked from the date he began his assignment in the position at issue. The Organization has failed to demonstrate, however, whether Claimant ever worked on a rest day, and if so, how often. Absent such a showing there is no basis upon which this Board may award compensation for those days.

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 23rd day of September 1998.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

INTERPRETATION NO. 1 TO AWARD NO. 32795

DOCKET NO. SG-32950

NAME OF ORGANIZATION: (Brotherhood of Railroad Signalmen

NAME OF CARRIER: (Burlington Northern Railroad

By letter dated September 21, 1999, the Board was advised as follows by the Organization:

“The above-referenced Third Division Award 32795 was adopted on September 29, 1998. The claim was filed on behalf of Mr. V. H. Yost, wherein the Carrier required the Claimant to observe Tuesday and Wednesday as rest days instead of Saturday and Sunday as required by the Agreement. As noted, the Board held in part: “Had the Claimant been properly assigned he would have received time and one-half for any Saturday and Sunday on which he worked. Thus, he is entitled to be compensated at the time and one-half rate for each Saturday and Sunday he worked from the date he began his assignment in the position at issue.”

The Organization’s challenge is that the Claimant is entitled to the overtime rate for the rest days he worked as regular positions. Because of the incorrect assignment, the Claimant worked various Saturdays or Sundays, but they were not, at the time, his rest days. The Board noted that the Carrier did violate the Agreement when it assigned the Claimant rest days of Tuesday and Wednesday, rather than Saturday and Sunday. While there is no evidence that he actually worked on either a Tuesday or Wednesday, while so assigned, the evidence is clear that, while so assigned he worked Saturdays and Sundays as part of his (incorrect) workweek responsibility.

Some confusion in this case seems to have arisen because the Board stated that we did not find that the Claimant had actually worked on either a Tuesday or

Wednesday while erroneously assigned. It is to those days the Board refers when it states that there is no evidence that the Claimant worked on his [incorrect] rest days, i.e., Tuesday and Wednesday.

A review of the record and prior Awards, however, suggests that some monetary penalty is, in fact, appropriate in this case. A long line of Awards on this and other Boards persuades the Board that a proper finding in this case is that, because he was erroneously assigned, the Claimant is entitled to the difference between the straight time he received for working Saturdays and Sundays and the punitive rate of pay he would have received if properly assigned. (See, for example, Award 2, Public Law Board No. 4716, Second Division Award 7041, and Public Law Board No. 4715, Award 2.) He is not, however, entitled to straight time for any Tuesday or Wednesday, on which he performed no service. Accordingly, that portion of the original claim remains denied.

Referee Elizabeth C. Wesman who sat with the Division as a neutral member when Award 32795 was adopted, also participated with the Division in making this Interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 20th day of December, 2000.