

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35706
Docket No. SG-35603
01-3-99-3-526**

The Third Division consisted of the regular members and in addition Referee Curtis Melberg when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern Railroad (KCS):

CLAIM A:

Continuing claim on behalf of signal employees who will be assigned to Signal Inspector positions at Garland, TX, Job #807, and at Baton Rouge, LA, Job #828, and all personnel assigned to like positions of Signal Inspector in the future, for 16 hours pay at the straight time rate for each Thursday and Friday to compensate them for their loss of work, since these days would have normally been part of their regular assigned 5 day work week; and for 16 hours pay at the time and one half rate for services rendered on Saturday and Sunday as planned work for the Carrier, account Carrier violated the current Signalmen’s Agreement, particularly Rules 8 and 46, when it changed the Signal Inspectors 5 day position with work days of Monday through Friday, rest days on Saturday, Sunday, to work days of Saturday through Wednesday with Thursday and Friday as rest days. Carrier File No. K0698-5066. General Chairman’s File No. BRS 974508. BRS File Case No. 11038-KCS.

CLAIM B:

Continuing claim on behalf of signal employees who will be assigned to Signal Inspectors positions at Shreveport, LA, Job #821, and at Mauriceville, TX, Job #824, and all personnel assigned to like positions of Signal Inspector in the future, for 16 hours pay at the straight time rate for

each Thursday and Friday to compensate them for their loss of work, since these days would have normally been part of their regular assigned 5 day work week; and for 16 hours pay at the time and one half rate for services rendered on Saturday and Sunday as planned work for the Carrier, account Carrier violated the current Signalmen's Agreement, particularly Rules 8 and 46, when it changed the Signal Inspectors 5 day position with work days of Monday through Friday, rest days on Saturday, Sunday, to work days of Saturday through Wednesday with Thursday and Friday as rest days. Carrier File No. K0698-5066. General Chairman's File No. BRS 974508. BRS File Case No. 11038-KCS.

CLAIM C:

Continuing claim on behalf of signal employees who will be assigned to Signal Inspector positions at Grandview, MO, Job #810, and at Heavener, OK, Job #831, and all personnel assigned to like positions of Signal Inspector in the future, for 16 hours pay at the straight time rate for each Thursday and Friday to compensate them for their loss of work, since these days would have normally been part of their regular assigned 5 day work week; and for 16 hours pay at the time and one half rate for services rendered on Saturday and Sunday as planned work for the Carrier, account Carrier violated the current Signalmen's Agreement, particularly Rules 8 and 46, when it changed the Signal Inspectors 5 day position with work days on Monday through Friday, rest days on Saturday, Sunday, to work days of Saturday through Wednesday with Thursday and Friday as rest days. Carrier File No. K0698-5066. General Chairman's File No. BRS 974508. BRS Case File No. 11038-KCS."

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.

The three claims presented here involve essentially identical facts and issues and, after completion of handling at the initial appeal level on the property, were consolidated by the Organization and appealed jointly.

The claims were triggered when the Carrier, on or about November 17, 1997, abolished a number of Signal Inspector assignments, all having Monday through Friday workweeks and Saturday and Sunday rest days, and established the six Signal Inspector assignments identified in the above-quoted Statement of Claim, all with Saturday through Wednesday workweeks and Thursday and Friday rest days. Each of the six assignments required its incumbent to protect a separate, designated territory, but aside from FRA testing, the record reveals little in the way of specific information regarding the incumbent's duties.

Effective March 8, 1998, the Carrier again changed the workweeks of the same six Signal Inspector assignments. However, this change, the facts and circumstances of which are not fully detailed in the record before us, is not within the scope of the instant claims, so we make no decision here regarding the merits thereof.

By letters dated October 27, 1997 addressed to Signal Supervisor C. R. Jones, the Organization promptly challenged the propriety of the six Signal Inspector assignments to be established on November 17, 1997, stating its position as follows:

"Since the beginning of time, the Signal Inspector positions have met the requirements and duties of the Carrier having been assigned work days of Monday through Friday, 5 day positions with Saturday and Sunday as rest days, per Rule 8(b) and Rule 46(a) and (b). The Carrier has presented no reason for the change of rest days on these new positions. The Organization knows of no operational problems of which the Carrier might contend that the work cannot be met as per Rule 8(b) of the Agreement. Also there is no Agreement between the parties to deviate from the Monday through Friday work week as per Rule 8(f) of the Agreement."

The Rules cited by the Organization, 8(b) and (f) and 46(a) and (b), read, respectively, as follows:

“RULE 8 - 40 HOUR WEEK

* * *

(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.

* * *

(f) Deviation from Monday - Friday Week - If in positions or work extending over a period of five days per week, an operational problem arises which the carrier contends cannot be met under the provisions of paragraph (b), above, and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, and if the parties fail to agree thereon, then if carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under the rules of this agreement.

RULE 46 - MONTHLY RATED EMPLOYEES

(a) Inspectors, Foremen, Signal Shop Foremen, Signal Maintainers, Relief Signal Maintainers, and Special CTC Maintainers will be paid a monthly rate. The monthly rates for such positions are based on 213 hours per month. Future wage adjustments shall be made on the basis of 213 hours per month. Except as otherwise provided, employees filling these positions shall be assigned one regular rest day per week, Sunday, which is understood to extend 24 hours from their regular starting time. Rules applicable to hourly rated employees shall apply to all service on Sunday and to ordinary maintenance or construction work on holidays or on Saturdays.

(b) Except as provided herein the monthly rate shall be for all work subject to Rule 1 of this Agreement on the position to which assigned during the first five days of the work week, Monday to Friday, inclusive.

Also the monthly rate shall be for other than ordinary maintenance and construction work on Saturdays.”

Rejecting the Organization’s contentions, the Carrier argues Rule 46 is inapplicable here because its provisions dealing with rest days and workweek are specifically qualified by the phrase “Except as otherwise provided,” and Rule 8, the parties’ 40-Hour Week Rule, provides otherwise. Rule 8(f), quoted above, the Carrier asserts . . . expressly allows for deviations based on certain operational requirements of Carrier.” Also cited by the Carrier are Rules 8(a) and (j), reading as follows:

“(a) Subject to exceptions contained in this Rule, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven is hereby established; 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. This work week rule is subject to the provisions of this agreement which follow:

* * *

(j) Sunday Work - Existing provisions that punitive rates will be paid for Sunday as such are eliminated. The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with.

On the other hand, a rigid adherence to the precise pattern that may be in effect immediately prior to the effective date of the Agreement, with regard to the amount of Sunday work that may be necessary is not required. Changes in the amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change.” (Emphasis by Carrier)

The Carrier asserts that an increase in the amount and type of traffic moving over the system and the resulting decrease in track time available for Signal Inspectors to perform FRA-required tests prompted the change in their workweek. By changing

their workweek to include Saturday and Sunday, the Carrier avers, more track time became available to do the FRA testing because maintenance of way track machines and local trains normally did not work those days.

Although the Organization cites provisions from both Rule 8 and Rule 46 in support of the instant claims, because of the previously-noted "Except as otherwise provided" language contained in Rule 46, we find that resolution of the issue presented here must focus on, and attempt to reconcile with, the applicable provisions in Rule 8.

Of particular importance to any analysis of Rule 8 are the provisions of the introductory note thereto, reading as follows:

"NOTE: The expressions 'positions' and 'work' used in this Rule 8 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."

As we read the record, the six Signal Inspector assignments established on November 17, 1997, protected five-day "positions." The Carrier did not deny the Organization's allegations to this effect during the handling of the claims on the property, and the Carrier itself invoked Rule 8(f), which applies only to five-day positions, when asserting its operational requirements allowed for the "deviation" made in the Inspectors' workweek. On the property, the Carrier made reference to the staggering of workweeks, and in its Submission to the Board the Carrier mentions the need for seven-day service, but it presented no probative evidence relative to either matter.

Accordingly, we are led to Rules 8(b) and 8(f), quoted above, which deal with the rest days and workweeks of assignments protecting five-day "positions"; i.e., service, duties, or operations necessary to be performed five days a week. When read together, these two Rules mandate that employees assigned to five-day positions have Monday through Friday workweeks and Saturday and Sunday rest days unless the Carrier has an operational problem that can be solved by "deviation" to a Tuesday through Saturday workweek with Sunday and Monday rest days.

The Carrier's action in establishing the six Signal Inspector positions in question is seriously undermined by Rules 8(b) and (f) in at least two respects: (1) those positions

were established with Saturday through Wednesday workweeks, not Tuesday through Saturday workweeks; and (2) in the face of a charge by the Organization that there had been no demonstration that the Carrier's operational problems were as significant as alleged, we find that the evidence presented by the Carrier relative to the issue is less than adequate. A relatively greater abundance of track time on Saturdays for Signal Inspectors to perform FRA-required tests and other duties could very well be a legitimate reason for "deviating" the workweek of a five-day position under Rule 8(f), but not on the record before us.

As for the remedy in this case, it shall be limited to the period of November 17, 1997 to March 8, 1998, when as earlier noted, the Carrier made further changes to the six Signal Inspector assignments in question that are not within the scope of the instant claims. As for the period of November 17, 1997 to March 8, 1998, we find that the incumbent of each of the six Signal Inspector assignments in question is entitled to the difference between the straight time pay he received for working Saturdays and Sundays and the overtime pay he would have received for working those days if he had been assigned a Monday through Friday workweek. No compensation is awarded to any of those incumbents for Thursdays and Fridays, days on which they performed no service.

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 19th day of September, 2001.