

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36177
Docket No. SG-35760
02-3-99-3-631**

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Baltimore and
(Ohio Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (B&O):

Grievance on behalf of all Signal employees working on the Baltimore and Ohio Railroad for Signal Maintainer positions on the Chicago Division at North Baltimore, Holgate and Tiffin, Ohio, to be abolished and re-bulletined with the rest days on Saturday and Sunday, account Carrier violated the current Signalmen’s Agreement, particularly Rule 8, when it bulletined these positions with rest days other than Saturday and Sunday. Carrier’s File No. 15(98-318). BRS File Case No. 10973-B&O.”

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.

Alleging no operational change, the Organization filed a grievance on September 22, 1998 to abolish and bulletin three Signal Mainainer positions with the correct rest days as required by Rule 8. It argues that at North Baltimore, Holgate and Tiffin, Ohio, Rule 8 required five day workweeks with Saturday and Sunday as the two consecutive rest days.

The entire substance of the Carrier's denial on the property is presented in its November 20, 1998 response stating that there is "necessary signal work to be performed at the concerned locations seven days per week and that the need for service is controlling. If the service is consistently required seven days per week, then the positions are seven-day assignments." It continued to argue that:

"When all work can be effectively performed by staggering the workweek of regularly assigned employees, the necessity for relief assignments on rest days does not exist. Carrier may, in accordance with its operational requirements, stagger 5 day assignments so that the rest days of some assignments will coincide with the workdays of other 5-day assignments, as was done in this case, and thus make it possible for the regular employees to do all the work necessary to have performed on those days, particularly where, as here, the employees perform the same type work and are carried on the same seniority roster."

There was nothing further presented by the Carrier in this dispute. Thereafter the Organization directly confronted the Carrier's response. It argued that there were nine five day a week positions on this territory with rest days of Saturday and Sunday each week. It charged the Carrier with adding nine new positions with the same headquarters and territory, all of which can perform all their maintenance work on the five work days of Monday through Friday. It stated that in violation of Rule 8, the Carrier established these new positions and staggered their rest days "to avoid paying overtime for weekend calls."

The Board reviewed the numerous Awards presented by both parties to this dispute. We carefully weighed the issues of new positions versus old positions and the right of the Carrier under Rule 8 to stagger workweeks "in accordance with the Management's operational requirements. . . ." We are also keenly aware that there is no absolute requirement for the Organization's alleged Saturday and Sunday rest days as the Rule states that it shall be those days " . . . so far as practicable. . . ."

The Board reviewed the entire record beginning with a review of evidence that the work requires a seven day workweek. The Carrier asserted it has an operational need for

seven day assignments. We studied the record to determine if there was a demonstrable increase in activity on this territory, of increased train traffic, pay for overtime or statements documenting the need for the new positions due to activity on this territory necessitating a seven day assignment. The record must show that operations are required six days a week or seven days a week so that even though the employee was a five day employee he would need to stagger his days off. The record must show that the Claimants should receive compensation for violation of the Rule.

However, the Board finds that the claim before us requests a declaratory judgment that the Carrier violated Rule 8 and an order to abolish and rebulletin positions with rest days of Saturday and Sunday. We find no Claimants named, nor a request for monetary relief in the claim at bar. Consequently, even if the Board ultimately found the Organization's position meritorious based on the evidence of record, the result would be a clear declaratory judgment and an order for injunctive relief. The Organization made a request that is improper and for which the Board clearly lacks authority to act.

Accordingly, we will not review and discuss the merits, nor can we reach a decision to this dispute. Awards too numerous to recite have consistently stated that when a declaratory judgment or injunctive relief is requested it is beyond the jurisdiction of the Board. Because no remedy could ever be ordered, the claim must be dismissed without full consideration of its merits.

AWARD

Claim dismissed.

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 20th day of August 2002.