

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36407
Docket No. SG-36353
03-3-00-3-559**

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: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad Company:

Claim on behalf of C. H. Minix for payment for all time held on duty at the time and one-half rate, until the double time rate becomes applicable. This claim to be effective July 16, 1999, and continuing until the Carrier allows the Claimant to mark off. Account Carrier violated the current Signalmen’s Agreement, particularly Rules 15 and 16, when it instructed the Claimant to remain on call, seven days a week, 24 hours a day, and threatened to discipline him if he disregarded these instructions. Carrier’s File No. 1197769. General Chairman’s File No. SWGC-2009. BRS File Case No. 11243-UP.”

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 time this dispute arose, the Claimant was assigned to a position of Signal Maintainer. Neither party to the dispute has identified the location of the Claimant's Signal Maintainer position.

As outlined in the STATEMENT OF CLAIM, supra, the Organization alleges that the Carrier somehow violated the provisions of Rules 15 and 16 of the Agreement. These Rules read as follows:

"RULE 15 - CALLS

- A. Employees released from duty and notified or called to perform work outside of and not continuous with regular working hours will be paid a minimum allowance of three (3) hours at the time and one-half rate; if held longer than three (3) hours, they will be paid at the rate of time and one-half computed on the actual minute basis, until the double-time rate becomes applicable as provided in Rule 13.
- B. The time of employees so notified in advance will begin at the time required to report. The time of an employee called will begin at the time called. The time of an employee notified or called will end at the time released at designated headquarters point.
- C. Employees so called less than one (1) hour before their regular starting time will be paid one (1) hour at the time and one-half rate; if more than one (1) hour, they will be paid three (3) hours at the time and one-half rate. If on duty for more than three (3) hours, they will be paid at the rate of time and one-half computed on the actual minute basis."

"RULE 16 - SUBJECT TO CALL

- A. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent,

about when they will return, and when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348.

It is agreed that under the provisions of this rule the Management may, on thirty (30) days written notice to the employees involved and the General Chairman, schedule alternate interlocking repairmen and signal maintainers on one or more of the districts to remain on call on rest days, which will include all time from the end of the work period on Friday to the beginning of the work period on Monday. Such employees designated in the schedule to be available for call will keep the train dispatcher or the person designated by the Management informed as to where they can be called, and will respond promptly when called. Employees will be paid eight (8) hours pro rata rate on the rest days on which they are designated in the schedule to be available for call; and if called to perform service on such days, will be paid in addition in accordance with Rule 13. Employees not scheduled to be available for call will be relieved on rest days except where emergency conditions necessitate their being available, in which event they will be notified prior to the end of the work period of the preceding day and paid in the same manner as employees scheduled to be available.

The schedule designating positions, incumbents of which will be required to be available for call on rest days, will be prepared for a six (6) months or longer period by the General Chairman and the designated Carrier Officer or their designee.

- B. The allowance provided in Section of this rule is not applicable to employees called or notified in advance to work on rest days, or who are given the option of working on rest days.**
- C. Regularly assigned signalmen required to be available for call on rest days while temporarily relieving signal maintainers or interlocking repairmen who are scheduled to be available for call on such days, in accordance with Section (a) of this rule, will be**

allowed minimum of eight (8) hours' compensation at rate of time and one-half.

Unassigned signalmen or assistant signalmen required to be available for call on rest days while temporarily relieving signal maintainers or interlocking repairmen who are scheduled to be available for call on such days in accordance with the provisions of Section A of this rule will be allowed eight (8) hours' compensation at pro rata rate.

No compensation will be allowed employees relieving signal maintainers or interlocking repairmen on rest days unless required to work or be available for call in accordance with the provisions of Section A of this rule.

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 was in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in 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."

The nub of this claim is found in the Organization's contention that the Claimant was at some unidentified time and place notified by his supervisor that:

"... he would be on call seven (7) days a week twenty-four (24) hours a day. He was not to sign off duty. XXX if he should sign off he would be given a level (3) upgrade."

The flip side of this nub is found in the Supervisor's statement in which he said:

"(Claimant) was instructed if he was at home, he was subject to call and that he needed to protect that (sic) job he was on."

The evidence in this case record supports the Carrier's position that the Claimant was not, in fact, on duty or on call on a continuous basis as alleged. Rather, the work records of the Claimant as introduced into the case file during the on-property handling of the dispute clearly show that the Claimant was indeed marked off duty on numerous dates and times following the beginning date of the instant claim.

In short, there simply is no credible evidence to be found in this case record to support the Organization's contentions that Rules 15 and/or 16 have been violated in any manner, shape or form.

Inasmuch as the Organization, as the moving party in this dispute, bears the responsibility to support its claim with credible proof of a violation and inasmuch as that responsibility has not been met in this case, the claim as presented is 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 18th day of February 2003.