

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36940
Docket No. SG-36514
04-3-00-3-758

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 R. A. Grijalva for payment of all time (80 hours) at the straight time rate plus any overtime worked on the Carrizozo, NM Maintenance District. Account Carrier violated the current Signalmen's Agreement, particularly Rule 26, when Carrier failed to provide vacation relief on the Carrizozo, NM Signal Maintenance District between October 11 and 22, 1999. Carrier's File No. 1214690. General Chairman's File No. SWGC-2070. BRS File Case No. 11458-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.

The Claimant in this case held the senior position on the Signal Gang working on the Carrier's New Mexico Division. The Organization initiated a claim on behalf of the Claimant alleging that:

"Mr. J. Vega, Carrizozo Signal Maintainer, was on vacation from October 11, 1999 to October 22, 1999 and Carrier failed to provide relief."

There is no information in the claim file to identify or indicate where on the New Mexico Division the vacationing Signal Maintainer or the Claimant's Signal Gang were located.

The Carrier's denial of the claim stated that "relief people from the Signal Gang were not available due to construction project commitments." This reason for denial was repeated at each level of the on-property claim handling. At no time during this process was the Carrier's contention rebutted by the Organization.

The Agreement Rule which is of concern in this dispute is Rule 26 - Relieving Foremen and Maintainers, which reads as follows:

"Rule 26 - Relieving Foremen and Maintainers

When Signal Gang Foremen are off during vacation periods, or for other reasons, they will be relieved by the Assistant Signal Foreman or Lead Signelman assigned to that gang, if available. If not available, they will be relieved by the senior qualified employee in Class 1 assigned to the Signal Gang.

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 1 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 portion of the Rule which is involved in this particular case is the last paragraph of the Rule relative to the Carrier's obligation to make an effort to provide vacation relief when the vacationing employee is off duty longer than one week.

The facts of this case are not really in dispute. A Signal Maintainer was on vacation from October 11 to October 22, 1999. The Carrier did not provide vacation relief for this position.

The Organization argued, without offering any evidence or support for its argument, that the Carrier did not make any effort to fill the vacation absence.

The Carrier argued that they were unable to provide vacation relief because "relief people from the Signal Gang were not available due to construction project commitments." The Carrier further pointed out that the Claimant was fully employed on his regular assignment during the period in question.

Fortunately, for the Board, the issue involved in this case was recently addressed by the Board. In Third Division Award 36834 involving the same parties and the same Rule, and the same specific portion of Rule 26, the Board ruled as follows:

"Award 35028 is distinguishable. While that Award refers to Award 31814, in that case the Carrier argued concerning its efforts 'that there was no available relief signal employee to fill the position of the vacationing employee.' Therefore, the Carrier made some kind of showing in that case about its efforts to provide vacation relief. Here, the Carrier made no similar showing. Here the Carrier stated it decided not to provide vacation relief — period. Under Rule 26, it must show more.

We do not have to decide the degree of showing which must be made in these cases for the Carrier to demonstrate that 'every effort' has been made. However, under the plain language of Rule 26, the Carrier must make some kind of showing of what 'effort' it made. Here, there is no such showing."

Award 36834 purports to reflect "... how we now believe the language should be interpreted. . . ." The Award held in that case that the Carrier's statement "that there was no available relief signal employee to fill the position of the vacationing employee" met the Carrier's obligation to "... make some kind of showing of what 'effort' it made."

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 22nd day of March 2004.