

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37542
Docket No. SG-36573
05-3-01-3-86

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(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 V. A. Glenn, J. D. Copple and F. S. Windriver for 60 hours pay each at the straight time rate and for 40 hours pay each at the half-time rate. Account Carrier violated the current Signalmen's Agreement, particularly Rule 36, when on February 5 and 6, 2000, Carrier did not allow the Claimants to work their normal assigned work days. In addition, on February 8, 9, 10 and 11, 2000 Carrier required the Claimants to work on their assigned rest day. Carrier also failed to allow the Claimants to take their guaranteed Four-Day consecutive rest days immediately following the work period. Carrier File No. 1220425. General Chairman's File No. UPGC-1004. BRS File Case No. 11457-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 Organization here maintains that the Carrier violated Rule 36 when it refused to allow the three Claimants to complete their regular work schedule of eight days on, four days off, and instead forced them to work on the four consecutive rest days appearing in their original schedule.

The record reflects that the Claimants, assigned to work Zone Gang 6500, started their eight assigned consecutive workdays on January 31, 2000. Rather than working through February 7 as scheduled, however, and then taking four consecutive days off, they state that they were told to go home on Saturday and Sunday, February 5 and 6, which were respectively the sixth and seventh days of their eight-day work cycle, and return on Monday, February 7, the eighth day of their workweek. They were then required to work February 8, 9, 10 and 11. On their regular schedule those days were their four off days.

The Carrier initially denied the claim on grounds that effective February 1, 2000, Rule 36 was amended to allow gangs to work four on and three off provided the entire gang concurred and that when this schedule was proposed, the Claimants tacitly agreed to it by their failure to object. Thus the gang started work on Monday, January 31, worked four days at the straight time rate and an additional ten hours on Friday, February 4 at the overtime rate. It then returned on Monday, February 7, worked four days at the straight time rate and worked Friday, February 11 on an overtime basis before the gang was abolished.

Subsequently, the Carrier attempted to dispose of the claim with a settlement offer on July 20 that would pay each Claimant 20 hours at the straight time rate and ten hours at the time and one-half rate. The Organization rejected that proposal and continued to seek 60 hours at the straight time rate for each Claimant and 40 hours each at the time and one-half rate.

If the Claimants did not agree to deviate from their eight and six schedule but were required to change schedules in the middle of their work period against their wishes with only two days of rest, the appropriate measure of their damages under the Agreement is as follows: (i) For the dates of Saturday, February 5 and Sunday, February 6, which the Claimants were required to take off, they are entitled to ten hours pay at the straight time rate for each day, their actual losses. (ii) For the dates of Wednesday, February 9 and Thursday, February 10, on which they worked at the straight time rate, they are entitled to an additional ten hours each at the one-half rate,

again their out-of-pocket losses. The Claimants failed to identify any Agreement terms supporting their request for additional pay for rest days taken and each had at least ten calendar days free from duty when the gang was abolished and before they displaced pursuant to Rule 58 (j.)

Lastly, the Board is asked to pass upon one additional aspect of the Carrier's July 20 settlement proposal in which it asserted an offset against the additional payments offered to take credit for its erroneous payment of ten hours at the time and one-half rate to the Claimants for February 4. The Carrier contends that if, as the Organization suggests, the Claimants should have adhered to their eight days on, six days off schedule, because of the way unanimous concurrence was obtained, February 4 should have been paid at the straight time rate. The Board agrees. Assuming such overpayment was made, because there is not rule support for objecting to the offset, and in reliance on the time-honored maxim that "equity abhors a windfall," there is no reason why the Carrier's offset request should not be granted. Accordingly, no additional payment is due for February 11, because the Claimants were already paid at the overtime rate for that day.

In sum, the Carrier's final offer of claim settlement makes the Claimants whole for losses incurred and is hereby adopted.

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 20th day of July 2005.