Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37564
Docket No. SG-37464
05-3-02-3-548

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(BNSF Railway Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe (BNSF):

Claim on behalf of M. A. Matthews, for payment of 39 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Section 6 and Section 10(b) of the National Vacation Agreement, when it distributed more than 25 percent of the workload of a vacationing employee to the Claimant from July 23, through August 3, 2001, without assigning a relief employee. Carrier's File No. 35 01 0050. General Chairman's File No. 01-098-BNSF-129-S. BRS File Case No. 12144-BNSF."

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.

In the instant claim, Signal Maintainer M. A. Matthews worked his regular duties and in addition, was asked to perform the work of a vacationing employee. The Claimant worked 16 and one-half hours during the period of July 23 through July 27, 2001 and 22 and one-half hours during the period of July 31 through August 3, 2001 on the vacationing employee's territory. The Organization argues that the Claimant was burdened with working more than 25 percent of the vacationing employee's work and was not properly compensated as per Sections 6 and 10(b).

The Carrier contends that the Claimant was properly compensated as per Rule 45(J). It maintains that on this property Rule 45(J) "supersedes the National Vacation Agreement Section 10 part (b)." It also argues that the Rule on this property was negotiated and applied without prior dispute. Lastly, Section 6 was not violated because the Carrier did not need a relief Signal Maintainer.

The Board notes that the Organization's major argument is that Rule 45(J) has nothing to do with the distribution of 25 percent of a vacationing employee's work load. The Organization's arguments centered on the fact that Rule 45(J) pertains to the use of an employee on adjacent territory irrespective of whether the other employee was working or not. While we appreciate the language of both Rules and studied the National Vacation Agreement as contrasted against Rule 45(J), applicability of even unambiguous language rests upon the explicit record and circumstances that have been developed on the property.

We are constrained by the very nature of the on-property evidence to conclude in this case, as we did in Third Division Award 37563 that the claim must be denied. No violation occurred for the reasons stated in Award 37563.

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 20th day of July 2005.

LABOR MEMBERS DISSENT
Third Division Award 37564
Docket No. SG – 37464

Here we go again! *(See dissent to Award 37563).*

Unfortunately, as in some of the older Awards of the Division they included the documents that were presented during the handling on the property. If that had occurred in this instance a reasonable mind would conclude that the Board did not fully review the record. Instead the Board took the easy way out and fell back on its decision in Award 37563 and concluded for the second time that its previous decision was correct.

What is perplexing is that this Award implies that the Board reviewed the positions of both parties and **"...studied the National Vacation Agreement as contrasted against Rule 45(J)..."** This statement is without foundation. If this had actually occurred it would have been apparent that it was only during the last stages of handling this dispute that the Carrier off-handily implied or suggested that Rule 45 (J) superceded or negated the National Vacation Agreement.

Using the Boards way of thinking one could make the assumption that the rules governing overtime payment for working in excess of the regular hours would negate Rule 45(J) along with the National Vacation Agreement. Such an unintelligent finding and interpretation could squelch the purpose of negotiating agreements on the property – both local agreements and national agreements without the threat that one agreement could negate another without either party having knowledge that this was would be the final result.

What we have here is a case that the Carrier will at its peril process disputes in an effort to invent controversy.

Bottom Line!

Two wrongs do not make it right!

C.A. McGraw, Labor Member
NRAB Third Division