

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37630
Docket No. SG-37272
05-3-02-3-251**

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien 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 (UP):

Claim on behalf of J. L. Rhines, F. A. Dickie, and L. W. Stover, for 16 hours each at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, especially Appendix 9-B, Paragraph 2, when it failed to properly compensate the Claimants while working on their rest day away from their assigned headquarters on January, 27, 2001 and February 3, 2001. Carrier's File No. 1261557. General Chairman's File No. W-9B-104. BRS File Case No. 11882-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 material facts that led to this claim are not in dispute. In January and February 2001, the Claimants were assigned to a Signal Gang(s) with a fixed headquarters. Their regular workweek was Monday through Friday. Saturday and Sunday were their regular rest days. They were working away from their headquarters in January and February 2001.

On Saturday, January 27 and Saturday, February 3, 2001, the Claimants worked away from their headquarters. They were paid overtime for this service on their rest days. After completing work on January 27 and February 3, 2001, the Claimants returned to their headquarters for their Sunday rest day.

On February 26, a claim was filed on behalf of the Claimants for eight hours at their time and one-half rate of pay for Saturday, January 27 and Saturday, February 3, 2001. It was the Organization's position that because the Claimants were held away from their headquarters for their Saturday rest day, they were entitled to eight hours of pay at the time and one-half rate in accordance with Appendix 9-B of the Agreement.

The Carrier denied the claim contending that Appendix 9-B, Paragraph 2 (also Appendix 0, Paragraph 2) was inapplicable because the Claimants returned to their headquarters on their first rest day (Saturday) giving them their second rest day (Sunday) off.

The contractual language governing this dispute provides that:

"In connection with fixed headquarters signal gangs that are working at away from headquarters locations, it is agreed the following will be effective as of December 1, 1975:

1. Fixed Headquartered Signal Gangs established in accordance with Memorandum of Agreement dated November 8, 1972, will, unless being held to perform services on a holiday or their rest days or traveling conditions do not permit, be returned to their headquarters for rest days and holidays. Such employees, including the foreman, will be compensated at straight-time rate for travel time involved whether within the assigned working hours or outside the assigned working hours while operating or riding in a Company vehicle or traveling by a

commercial means of transportation as may be authorized by Management.

2. It is further agreed that, if the employees referred to above are held away from headquarters for rest days or holiday service, they will be allowed a minimum of eight (8) hours at time and one-half rate for a single one day holiday or for the two day rest period."

The Carrier argues that the minimum allowance provided by Appendix 9-B, Paragraph 2, only applies when employees assigned to Signal Gangs with fixed headquarters are held away from their headquarters for the two day rest period. Because the Claimants were not held away from their headquarters for their two rest days, the Carrier contends that Appendix 9-B, Paragraph 2 was inapposite to them.

The Board respectfully disagrees with the Carrier's application of Appendix 9-B, Paragraph 2. In our view, this contractual provision was intended to allow employees assigned to Signal Gangs with fixed headquarters compensation for being held away from their headquarters on any of their rest days or holidays. Inasmuch as the Claimants were held away from their headquarters on Saturday, January 27 and again on Saturday, February 3, 2001, which were their rest days, they were entitled to the allowance provided by Appendix 9-B, Paragraph 2. It is noteworthy that the Claimants were not returned to their headquarters until after they completed work on their Saturday rest days. Therefore, they had the benefit of only one rest day (Sunday) on both of these weekends.

The Carrier further argues that the allowance provided by Appendix 9-B, Paragraph 2, is not a penalty payment, but rather a guarantee of eight hours' pay at the time and one-half rate for employees who are held away from their headquarters on holidays or their rest days. Because the Claimants received eight hours' pay at the time and one-half rate for both Saturdays that they were held away from their headquarters, they are not entitled to any additional compensation, according to the Carrier.

Again, the Board must respectfully disagree with the Carrier's application of Appendix 9-B. In our view, the allowance provided by Appendix 9-B, Paragraph 2, was intended to compensate employees for being held away from their headquarters

on holidays or their rest days regardless of whether it is considered a "guarantee" or a "penalty." This allowance is entirely separate from any compensation employees earn for working on their rest days. The Board concurs with the findings of Public Law Board No. 4716, Award 119, that the Carrier must meet both contractual obligations.

Inasmuch as the Claimants were not returned to their headquarters until after completing a day's work on their rest days, they are entitled to eight hours of compensation at the time and one-half rate for Saturday, January 27 and Saturday, February 3, 2001. The claim is sustained as a result.

AWARD

Claim sustained.

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 19th day of October 2005.

CARRIER MEMBERS' DISSENT

TO

THIRD DIVISION AWARD 37630, DOCKET SG-37272 (REFEREE O'BRIEN)

Awards of the Board have consistently held that where the Agreement language is not ambiguous it must be applied as written. In this case the language of the Agreement was specific but nevertheless misinterpreted.

As stated by the Majority, the facts of the case were not disputed. A Signal Gang (which had two rest days) was returned to their headquarters location on a Saturday (the first rest day). They were compensated at the overtime rate for that rest day. The employees observed Sunday as their normally scheduled rest day.

Because they were not returned to their headquarters location on Friday evening, the Organization argued that the Carrier was in violation of Paragraph 2 of Appendix 9-B (also Appendix O) of the Agreement. This Rule specifically states:

"2. It is further agreed that, if the employees referred to above are held away from headquarters for rest days or holiday service, they will be allowed a minimum of eight (8) hours at time and one-half rate for single one day holiday or for the two day rest period." (Emphasis added)

The language is written in the plural sense and it clearly states that to receive this additional eight hours of time and one-half pay the employees would have to have been held away from their headquarters for both of their rest days. When the Majority awarded this additional payment to the employees who were only held for one of their rest days, it erred. Consistently, since inception of the Rule in 1975, the Carrier has accorded the Paragraph 2 payment only when both rest days were involved. Contrary to the language of the Award, there has been a "windfall" or "penalty" awarded.

One of the justifications for awarding this payment by the Majority was its additional reliance on the language of Award 119 of Public Law Board No. 4716. However, a reading of that Award reveals a different fact pattern than the one in this case. In Award 119, the Board resolved a dispute that encompassed employees being held away from their headquarters for both rest days. In discussing the contractual obligations of the Carrier, the PLB wrote in the terms or "rest days" and not "rest day." Reliance on Award 119 should not have been made in this case.

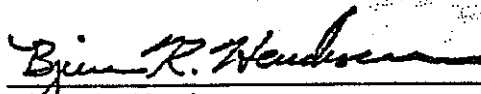
CARRIER MEMBERS' DISSENT

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While the Carrier will undoubtedly dispose of the instant claim in accordance with the language of the Award, we consider the Award to be palpably erroneous and will not treat it as valid precedent in the event similar claims are presented in the future.



Martin W. Fingerhut



Bjaane R. Henderson



John P. Lange



Michael C. Lesnik

11-22-05