

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 38989
Docket No. SG-39059
08-3-NRAB-00003-050495
(05-3-495)

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 J. W. Hopson, Jr., D. E. Lowery, Sr. and S. T. Williams, for four days pay each in addition to any other pay received during that pay period, account Carrier violated the current Signalmen's Agreement, particularly Rule 36, when it required the Claimants to work 14 days straight and failed to compensate them for July 6, 7, 8, and 9, 2004, which were the first four days of their next work schedule. Carrier's File No. 1407156. General Chairman's File No. S-36-527. BRS File Case No. 13206-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.

RULE 36 - TRAVELING GANG WORK provides as follows:

“Employees on zone gangs will work a schedule of either eight (8) days on and six (6) days off or twelve (12) days on and nine (9) days off. It is the intent of the parties to work employees on an eight (8) days on and six (6) days off schedule when possible given the operating requirements of the Carrier. In the event that the Carrier must work zone gangs on an eight (8) days on/six (6) days off schedule on their rest days, the Carrier will guarantee a minimum of four (4) consecutive rest days off between work periods. In the event that the Carrier must work zone gangs on a twelve (12) days on/nine (9) days off schedule on their rest days, the Carrier will guarantee a minimum of six (6) consecutive rest days off between work periods. The work schedule of gangs working compressed schedules of either eight (8) days on and six (6) days off or twelve (12) days on and nine (9) days off will, with a majority vote of all members of the gang, commence their work schedule on either a Tuesday or Wednesday.

* * *

NOTE: As an example, if a zone gang is working eight on and six off and the Carrier works them for fourteen (14) days straight, they will have the first four (4) days of their work week off and paid at straight time (according to the work schedule) and then they complete their work period by working four (4) days then having their six (6) days off.”

The Claimants are members of Gang 2694. This dispute arose as a result of the decision of Manager Signal Construction R. Thompson to vary the Claimants' normal work schedule in June 2004 to conform to the schedule of a track program

gang. As a result of that change, the Claimants worked for six days (June 6-11, 2004) had four rest days (June 12-15, 2004) worked 14 straight days (June 16-29, 2004 - the first six days at overtime) and then had six rest days (June 30-July 5, 2004 - July 5 being a holiday).

The Carrier considered July 6-9, 2004 as work days. However, the Claimants did not return to their assignments on July 6-9, 2004, asserting that those four days were the first four days of their work schedule, which should be days off. The Claimants also filed this claim seeking compensation for those four days.

The parties are in complete disagreement concerning application of Rule 26 and the explanatory note to the facts in this case. The Organization contends that as a result of the change of schedule, after the Claimants had six days off (June 30-July 5, 2004) the Claimants were nevertheless entitled to four additional days off (July 6-9, 2004 - their normal rest days). The Carrier contends that the Claimants had six consecutive rest days after working 14 days and that is the extent of their entitlement under Rule 36 and the explanatory note.

For the sake of discussion and without deciding the question, we will give the Organization the benefit of the doubt that the Claimants had at least a colorable argument under Rule 36 and the explanatory note that the four days in dispute (July 6-9, 2004) should have been rest days. If the Carrier improperly assigned the Claimants to work on those days - and had the Claimants worked as directed - the orderly process of the claims processing procedure could have afforded the Claimants an appropriate remedy for being required to work on days that should have been rest days. But what the Claimants could not do was simply refuse to show up for those four days the Carrier contended were assigned work days. The governing rule is "work now, grieve later." The Claimants grieved, but chose not to "work now." Employees are not entitled to engage in self-help by withholding their services when their interpretation of the governing Rules is different from the Carrier's. That is why collective bargaining agreements have grievance procedures. On that basis, we shall deny the claim.

Form 1
Page 4

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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 27th day of March 2008.