

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39515
Docket No. SG-38934
09-3-NRAB-00003-050366
(05-3-366)

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn 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:

Claim on behalf of E. Cenicerros, Jr., A. J. Davis, D. Z. Moreno and K. I. Walker, for six (6) hours each at their time and one-half rates of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 36 and 80, when it changed the Claimant's work schedule in violation of Rule 36 and failed to compensate the Claimants for the travel incurred on April 16, 2004. Carrier's File No. 1401934. General Chairman's File No. W-36-407. BRS File Case No. 13180-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.

At the time this dispute arose, the Claimants were assigned to signal positions on Zone Gang 6431 (Zone 3) working a schedule of eight days on/six days off, Tuesday through Tuesday. The Carrier instructed the Claimants to report to work on Saturday, April 17, 2004, three days before the April 20 start of their regular work cycle. This required that they travel on April 16, one of their four guaranteed rest days between work periods. The Organization alleges that the Carrier required the Claimants to perform service by traveling to the job site on April 16, failed to give them four consecutive days off as outlined in Rule 36, and failed to properly compensate them for this time. The Organization asserts that under Rule 5J(1) each Claimant should be compensated six hours at time and one-half for their travel on April 16, 2004, and contends that Rule 5J(1) supports this claim. The Carrier asserts that the Claimants were not entitled to any compensation other than the travel allowance that they have been paid. It is undisputed that the Claimants were paid at their overtime rates for work performed on April 17, 18 and 19, 2004, the days preceding their regular work cycle.

Rule 36 states in relevant part:

“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. . . . 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.

* * *

Employees will receive \$9.00 for every twenty five (25) miles traveled from home to work at the beginning and end of each work period. The Carrier will give employees notice of work schedules and locations, except in emergency circumstances, so they can plan their travel.”

According to the Organization, the intent of the Rule was that the Claimants would have six days off, guaranteeing four consecutive days at home, and if they do not receive their guaranteed days at home, they are to be compensated as described in the first "Note" of Rule 36. However, that "Note" merely states that when the Carrier must work a zone gang on an eight on/six off schedule for 14 days straight, they will have the first four days of the workweek off and paid at straight time, per the work schedule, and then complete the cycle by working four days and then having their six days off. This insures employees in the situation described the four consecutive rest days off between two work periods; it does not specify that those four days will be spent at home. The "Note" merely illustrates that when a zone gang is not granted the minimum four consecutive rest days off between work periods, they will be granted the appropriate time off with straight time pay at the beginning of the next work period. As the Second Division explained in its Award 157:

"We can only interpret the rules and the agreements as they are made. In doing so, we must look to the common ordinary meaning of the words used. We cannot ascertain hidden and secret meanings which are not expressed and which cannot be proved."

Nothing in the language of the "Note," or any other part of Rule 36, entitles employees to receive guaranteed rest days at home, and the Organization cited no authority for this interpretation of the parties' Agreement.

The record shows that the Carrier gave the Claimants proper notice to report early, gave them four consecutive rest days off between work periods, and paid them the travel allowance required under Rule 36. Rule 36 entitles the Claimants to the travel allowance; it does not entitle them to compensation for travel time, not even for travel time on a day off. The Organization failed to prove that the Claimants performed any service by traveling on their April 16 rest day so there is no basis to conclude that they were entitled to any additional compensation claimed.

AWARD

Claim denied.

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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 2nd day of February 2009.