

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39652
Docket No. SG-39206
08-3-NRAB-00003-050681
(05-3-681)**

The Third Division consisted of the regular members and in addition Referee Joyce M. Klein when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(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:

Claim on behalf of R. S. Meiwes, C. R. Pruitt, B. E. Rodgers, A. J. Serna and B. J. Smith, for 10 hours each at their respective straight time rates of pay for each Monday and 10 hours each at their respective half-time rates of pay for each Friday beginning September 20, 2004, and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rule 46, when it arbitrarily changed the Claimants’ assigned work week from Monday through Thursday, with rest days of Friday, Saturday and Sunday, to Tuesday through Friday, with rest days of Saturday, Sunday and Monday. Carrier’s File No. 35 05 0009. General Chairman’s File No. 04-135-BNSF-172-A. BRS File Case No. 13309-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.

The Claimants contend that the Carrier violated Rule 46(B) when it changed their scheduled workweek from Monday through Thursday to Tuesday through Friday in order to provide a crew to work on Friday to use a rented boring machine five days a week. On September 8, 2004, the Carrier changed the weekly starting day of a Signal Construction Gang that elected a weekly work schedule of four ten-hour days from their previous assignment of working Monday through Thursday to work Tuesday through Friday with rest days of Saturday through Monday. On November 17, 2004, the Organization filed a claim for a period beginning from September 20, 2004 alleging that the Carrier violated Rule 46(B) by changing the Claimants' work schedule. The Organization's claim was received by the Carrier on November 19, 2004 and the claim was denied on January 7, 2005 because the Carrier contended it complied with the requirements of Rule 46(B). On January 18, 2005, the Organization appealed and the Carrier denied the appeal by letter dated March 10, asserting that the initial claim was untimely under the provisions of Rule 53.

The Organization maintains that its claim must be considered a continuing claim under the provisions of Rule 53(D). As a continuing claim, the Organization maintains that it is permitted to go back up to 60 days which permitted the filing of its claim on September 20, 2004. Rule 53 – TIME LIMIT ON CLAIMS – GRIEVANCES reads, in relevant part, as follows:

- “A. All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) calendar days from the date of the occurrence on which the claim or

grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within sixty (60) calendar days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

*** * ***

- D. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than sixty (60) calendar days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.”**

The Carrier contends that the claim is not a “continuing” claim under Rule 53(D) because the claim was triggered by the Carrier’s decision to change the weekly starting day and is not a continuing one.

Numerous Awards support the Carrier’s position that a claim based on a specific Carrier action which occurs on a specific date is not a “continuing” claim although there may be continuing liability. See for example Third Division Award 29894. In this instance, the Carrier reassigned the signal construction gang from a Monday through Thursday work schedule to a Tuesday through Friday work schedule on September 8, 2004. The Organization did not file a claim until November 17, and that claim was not received in the Carrier’s offices until

Form 1
Page 4

Award No. 39652
Docket No. SG-39206
08-3-NRAB-00003-050681
(05-3-681)

November 19, 2004, well in excess of the 60 days allotted by Rule 53(A). Accordingly, the Board must find the claim untimely.

AWARD

Claim dismissed.

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 22nd day of April 2009.