

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40309
Docket No. SG-39547
10-3-NRAB-00003-60335
(06-3-335)**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis 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 A. Esparza, C. J. Gagner, J. D. Highfill and R. D. Cremeans, for compensation for stand by pay as outlined in Attachment 5, Rule 15, account Carrier violated the current Signalmen’s Agreement, particularly Attachment 3, Rule 13, Attachment 5, Rule 15 and Appendix U, Article V, when it required Signal Inspectors in Northern California to be available for call from 3:30 PM on Saturday, January 1, 2005 to 7:00 AM on Sunday, January 2, 2005 without compensating them for their stand by service. Carrier’s File No. 35 05 0037. General Chairman’s File No. 05-030-BNSF-173-CA. BRS File No. 13410-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 in this case are monthly-rated Signal Inspectors, headquartered at Bakersfield, Fresno, and Stockton, California. This dispute developed when a Carrier supervisor notified the Claimants that they had to be available on their protect day for a 24-hour period starting at their normal start time or face possible discipline.

In response, the Organization filed a claim for pay at the overtime rate for all hours on Saturday, January 1 after 3:30 P.M. and for 12:01 A.M. until 7:00 A.M. on Sunday, January 2, 2005. The Organization contends that the Claimants should be paid overtime for being required to be available beyond eight hours on Saturday, their protect day.

The Organization further contends that the Carrier violated Rule 15(a) when the Claimants were required to stand by and were not compensated. The Organization asserts that on the days in question, as the supervisory message indicates, the Claimants were required to be available for service for 24 hours from 7:00 A.M. Saturday until 7:00 A.M. Sunday. The Claimants were instructed not to mark off unavailable during this period under the threat of discipline. According to the Organization, the Claimants were clearly prevented from absenting themselves from call; they were under the control and direction of the Carrier; and they were not free to come and go. Under these circumstances, stand by pay was warranted.

In support of its position, the Organization presented statements from various employees as well as payroll records which demonstrate, to the Organization, that Signal Inspectors have traditionally been required to be available for only eight hours on Saturday and they have been compensated when they were required to stand by.

The Carrier's position is that monthly-rated Signal Inspectors are assigned to work Monday through Friday with Saturday as their "protect day" and Sunday as

their rest day. The Carrier contends that their protect day is for a 24-hour period from 7:00 A.M. Saturday to 7:00 A.M. Sunday, during which they are subject to call. The Carrier also asserts that the Claimants were not required to stand by. These monthly-rated employees were merely instructed to be available for call on their sixth day as required by the Agreement.

Before addressing the merits of this dispute, there is a procedural issue which must be resolved. The Organization contends that the parties agreed upon time limit extensions for progressing the instant case to the Board. The original April 25, 2006 deadline for docketing this dispute was extended until June 30, 2006. The reason for the extended time limits, the Organization asserts, was to allow the Carrier to make an informed decision as to which of nine claims should be the lead case in this matter. However, during the granted time limit extension, the Carrier submitted letters dated May 31 and June 16, 2006 which were directed instead to the merits.

The Organization contends that the Carrier was "laying behind the log" in an attempt to improperly supplement its case.

While the Board understands the Organization's position, the fact remains that the parties agreed to an extension of time for docketing this case to the Board. The on-property record remained open for continued development until the time limit expired or a Notice of Intent to file an Ex-Parte Submission was served. The correspondence in question was submitted before the instant case was listed, and was within the agreed upon time limits extension, and therefore it is properly before the Board for consideration.

Turning now to the merits, the Board finds that the Organization did not establish a violation of the Agreement. In the absence of clear and unambiguous contract language which provides that monthly-rated Signal Inspectors need not be available for call beyond eight hours on Saturday, their protect day, as opposed to the 24-hour period of availability required Monday through Friday, the Organization had to prove that custom or historical practice supported its position. The evidence presented by the parties is highly conflicting and ultimately we must

conclude that the Organization, as the moving party with the burden of proof, cannot prevail.

By the same token, we are unconvinced that the Claimants herein are entitled to stand by pay. Rule 15 applies only when employees are required to stand by “outside of regularly assigned hours.” The Claimants were not required to stand by outside of their regularly assigned hours. They were instructed to be available for call on their sixth day in accordance with Rule 12. For these reasons, the claim must be denied.

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 1st day of March 2010.