

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40316
Docket No. SG-40459
10-3-NRAB-00003-080256**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 P. D. Anderson for 29 hours, R. E. Bradley for 24.25 hours, K. D. Broussard for 17 hours, T. D. Dye for 18 hours, M. E. Moulton for 20.5 hours and G. J. Wehrung for 19.5 hours, all at their respective overtime rates of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rule 8, when it temporarily changed the Claimants’ starting times in order to avoid overtime from October 30, 2006 through November 22, 2006. Carrier’s File No. 35-07-0008. General Chairman’s File No. 06-051-BNSF-188-SP. BRS File Case No. 13889-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 the instant case were assigned to a Signal crew headquartered in Spokane, Washington. This dispute arose when the Carrier temporarily changed the Claimants' starting times during the period of October 30 through November 22, 2006. In so doing, the Organization contends, the Carrier violated Rule 8 of the Agreement, which prohibits the Carrier from temporarily changing employees' start times for the purpose of avoiding overtime.

The Carrier acknowledges that the starting times were temporarily changed, but asserts that this was to coordinate starting times with other crafts scheduled to work on an Enhanced Capital Maintenance Project, also known as a "Blitz." The Carrier submits that a Blitz schedules major maintenance, repair, and upgrade work involving multiple crews from different crafts during the same track windows in order to minimize an adverse impact on customers and communities. As part of this major project, the start time of the Signal crew was changed to 5:00 A.M.

Rule 8 of the Agreement states, in pertinent part: "The starting time shall not be temporarily changed for the purpose of avoiding overtime." In Third Division Award 37975, which involved the same parties and the same Agreement language, the Board denied the claim, explaining as follows:

"In sum, to convincingly establish subjective intent by the Carrier to avoid overtime, the petitioner must satisfy the decision maker that there is a link between the Carrier's wrongful motives and its actions. In adopting Rule 8, the parties chose to make state of mind an essential component of a Rule 8 violation. Often, however, as the parties know, overtime considerations may play a role in the employer's decision but may be merely one of several legitimate objectives to be factored into its decision making. Rule 8 does not by any means preclude such an approach.

The difficult evidentiary problems presented by the bargain the parties struck on Rule 8, requiring proof of wrongful intent to establish a violation, are exemplified by this case. Impure motives can be hard to nail down because frequently the other party is

operating with superior information and need not alert others to all the facts that motivated it to act. The Organization asserts wrongful intent, but in support offers no evidence except to note that Signal crews had always started at 6:30 A.M., implying that such past practice was unalterable. None of that establishes a violation of Rule 8.

On the record before us, in the absence of any showing of intent to avoid overtime, the claim must be denied.”

Here, the Organization clearly distrusts the Carrier’s stated motives in changing the starting times of the Signal crew. The Organization asserts that it established improper intent by demonstrating that the Carrier could have had the Claimants report to work at 5:00 A.M. without temporarily changing their assigned starting time. This would have allowed the Carrier to accomplish its aims under the Blitz without avoiding the payment of overtime.

While there is logic to this argument, the Board is not convinced that it has merit in these particular circumstances. If the Organization’s position were adopted, then any time the Carrier changed the start time of an assignment, the employees would have to work overtime each day, based on the difference between the old starting time and the new starting time, regardless of the need for such overtime work. We believe the more sound interpretation of Rule 8 is to ensure that a bona fide need for a starting time change exists and that it is not solely an attempt to avoid overtime. In the instant case, the record supports the finding that the Carrier had a legitimate basis for changing the start time of the signal crew. The starting time of all gangs from every craft involved in the Blitz were changed to 5:00 A.M. because this time affected train movement the least. Because there were sound reasons for changing the starting times that were unrelated to the avoidance of overtime payments, a violation of Rule 8 has not been established. Accordingly, this claim must be denied.

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 1st day of March 2010.