

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40536
Docket No. SG-40673
10-3-NRAB-00003-080575

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 J. E. Green, for reimbursement for two hours of vacation pay for each day for May 28, 2007 and June 22 through June 26, 2007 and granted the additional days denied in 2007, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 25 and Appendix B, when it required the Claimant to use ten hours of vacation for each day instead of eight hours for days of vacation he took in 2007. Carrier’s File No. 1479957. General Chairman’s File No. UPGCW-APPB-1468. BRS File Case No. 14068-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.

The instant dispute is a companion to those adjudicated in Third Division Awards 40523, 40524 and 40537 which center on the proper application of vacation rights. In each of these cases, the Organization asserted that the Carrier improperly denied the Claimant the right to a "days" vacation, that being eight hours in a day. In each of these cases, the Claimant had worked a compressed workweek. The Claimant was assigned to Zone Signal Construction Gang 5836, which was working ten hours per day, eight days on and six days off. The Claimant was approved to be on vacation during the period of June 22 to June 26, 2007. He was not permitted to take an eight hour per day vacation on those days, because his Manager changed the hours from eight hours per day to ten hours per day. The Organization argues that such action violates the Agreement and practice.

As in the other instances, the evidence presented in this claim fails to prove a Carrier violation. Although the Rules state "work days" and there is argument in the record that the Carrier "never disputed that employees would take vacations as though they were working on a five (5) day forty hour work week," the proof in this record is insufficient. The Carrier denies any such agreement.

The Carrier's determination requires the employees to take their vacation in increments of days, not hours. If an employee works a compressed schedule and then gets the number of days, but can only take it in ten hour increments, rather than eight hour increments, they are obtaining vacation differently. As the Organization put it when the Manager instituted this outcome, "You can bet Manager MacQuarrie does not take his vacation days ten (10) hours at a time making sure he gets his days not hours, as he requires his subordinates." The problem is proof. The Rules indicated by the Organization do not require this of the Carrier. The Carrier supported its position with Rules such as the National Vacation Agreement, Appendix B, Section 7(a) Section 10(c) and others that refer to paying daily pay, not hourly pay. As an example, Section 7(a) states that, "an employee having a regular assignment will be paid on vacation, the daily compensation paid by the Carrier for such assignment."

In this instance, there is no proof that the Carrier violated the Agreement. There is no proof of past practice sufficient to support the Organization's allegations, particularly that everyone else is doing it by an eight hour day. The Board is unable to find in this full record sufficient probative evidence to support the Organization's claim. Accordingly, the burden of proof has not been met and the claim must fail.

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 15th day of June 2010.