

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40537
Docket No. SG-40674
10-3-NRAB-00003-080576**

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 F. Guerrero, Jr., for reimbursement for two hours of vacation pay for each day for June 9 and 10, 2007 and June 21 and 22, 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 the days of vacation he took in 2007. Carrier’s File No. 1479959. General Chairman’s File No. UPGCW-APPB-1469. BRS File Case No. 14067-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.

In this dispute, the on-property record indicates that the Claimant was granted his vacation on June 9, 10, 21 and 22, 2007. The instant dispute is a companion to those adjudicated in Third Division Awards 40523 and 40524, which center on the proper application of vacation rights. The Claimant was forced by the Carrier to take his vacation in a block of ten hours, rather than an eight-hour day. Because he was forced to take the vacation in the ten hour block, the Organization argues that he should be compensated for the two hours each day that he was on vacation. As the Organization put it, "Because the Carrier has required Claimant to utilize ten (10) hours of vacation he will be shortened the number of days allowed per the Agreement of earned vacation in the year.

The substance of this claim is that the Claimant was not permitted his right to vacation as any other employee. The Organization argues that the Carrier violated the Agreement, particularly Rules 5, 25 and Appendix B. Rule 5 states in part, that "employees working shortened work weeks . . . will accrue vacation credits and be awarded same as though working on a five (5) day forty (40) hour work week." Rule 25 (Vacations) states in part, that employees "may elect to designate one (1) five-day installment of their vacation to be taken in one day parts. . ." Appendix B (7)(a) provides that, "An employee having a regular assignment will be paid while on vacation the daily compensation paid by the carrier for such assignment."

Similar to prior claims, the Claimant worked a compressed workweek of eight 10-hour days, with six consecutive rest days. The Carrier refused to permit the Claimant the right to take an eight hour vacation day, insisting that the Claimant take a ten hour vacation day for each of his days. The Organization argued that this was against practice, it went against an agreement as documented by letters, and it denied the Claimant his rights under the Agreement.

The Board visited this issue with different arguments. In this instance, the Board does not find the requisite proof to support the claim. The record indicates that the Claimant worked the compressed schedule under Rule 36. In the Organization's view, the Claimant worked a ten-hour day for which he was compensated ten hours; but his vacation is not ten hours - only eight hours. The

Organization argues that this is a clear reduction in the number of vacation days that the employee obtains.

The Board does not find language in the Rules stated by the Organization to demonstrate that employees who accrue vacation time in eight-hour segments must expend vacation in eight-hour segments. The Board finds no negotiated language requiring the Carrier to provide the Claimant working a compressed schedule a vacation entitlement based on eight-hour work days. The Board finds no practice or sufficient proof that the Carrier has permitted or mandated employees on any compressed work schedule to take vacations as though working a five day, 40-hour workweek. Nor do we find a record whereby the Organization has negated the Carrier's Rule support in application of the National Vacation Agreement, Sections 7(c) paying "the daily compensation paid by the Carrier for such assignment" and 10(c) wherein "no employee shall be paid less than his own normal compensation for the hours of his own assignment. . . ."

The Board studied the full record and dispute. We find the Organization cannot support its position with practice or language. The burden is on the Organization to prove its position and allegations. It has not done so. The Carrier argued on the property that, "If you charged the employee working the compressed period only eight (8) hours as advocated by the Organization, that employee ends up with one additional vacation day versus the traditionally situated employee." The Organization's rebuttal notwithstanding, there is no proof that this has ever been the case on this property. Nor is there any clear language mandating this vacation payment of eight hours for employees who work a ten hour day. Nor does the Board find that the Organization proved that the claim of payment for two hours under this circumstance is required. The Board's full review does not find proof that the Carrier violated the Agreement. As such, the 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 15th day of June 2010.