

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40586
Docket No. SG-40590
10-3-NRAB-00003-080125**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 D. W. Johnson, for 216 hours at his straight time rate and for all overtime lost, account Carrier violated the current Signalmen’s Agreement, particularly Rule 26, when it failed to utilize the Claimant to relieve an open maintenance position starting on September 25, 2006 and continuing until the incumbent returns to his position causing a loss of work opportunity for the Claimant. Carrier’s File No. 1462733. General Chairman’s File No. S-26-802. BRS File Case No. 13818-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 Claimant is a Signaller on a construction Signal Gang who was fully employed during the claim period. This dispute involves the Signal Maintainer position occupied by employee Moon after he left on a Medical Leave of Absence (MLOA) around August 4, 2006. That position was advertised as temporary under Rule 51 and assigned to employee Neel, who occupied it between August 18 and September 18, 2006, when he bid off to another position. Thereafter, it was advertised again on September 28 and October 13, with no bids received, and eventually was assigned to employee Whitley as a result of a bid effective October 27, 2006. Whitley held the position temporarily at the time of the processing of the instant claim.

The following language of Rules 26 and 51 is relied upon by the parties in support of their respective positions in this case.

“RULE 26 - RELIEVING FOREMEN AND MAINTAINERS

When Signal Gang Foremen are off during vacation periods, or for other reasons, they will be relieved by the Assistant Signal Foreman or Lead Signaller assigned to that gang, if available. If not available, they will be relieved by the senior qualified employee in Class 1 assigned to the Signal Gang.

When Signal Maintainers or Signal Maintenance Foremen are off for periods that exceed one week in duration, they will, if relieved, be relieved by the Relief Signal Employee; and if not available, the senior qualified employee of Class 1 assigned to the Signal or Maintenance Gang.

The Carrier will make every effort to provide vacation relief on Signal Maintainer positions when the incumbent is off duty longer than one week.

RULE 51 - ADVERTISING POSITIONS FOR SENIORITY CHOICE

. . . new positions and vacancies of more than thirty (30) calendar days and less than six months' duration will be advertised within the above time limits as temporary. Except when temporary vacancy is due to physical disability of employee, a position which has been advertised as temporary and does in fact exceed six months, will be re-advertised at the end of six months as permanent. . . .”

The Organization argues that under the clear language of Rule 26, the Carrier is obligated to make every effort to relieve Maintainer positions where the employee is off for a period in excess of one week, and that its failure to make any effort in this case violates the Agreement, supporting the requested remedy, relying upon Third Division Awards 12632, 16573, 19695, 20687 and 36834. The Carrier contends that this case is governed by Rule 51, which applies to MLOAs, and not Rule 26, which applies to vacation relief. It asserts that it complied with Rule 51 by bulletining the position as temporary, and points to the Organization's implicit acknowledgement of that fact by commencing the claim on September 25, not August 4, 2006 when Moon went on his MLOA. The Carrier argues that Rule 26 governs only if it chooses to relieve the position, and that the language of the second paragraph is permissive, not obligatory, as found in Third Division Awards 36834 and 36940, and its “use best efforts” obligation in the last paragraph applies only to vacation relief. It contends that the Organization failed to meet its burden to prove a violation of the Agreement in this case, citing Third Division Awards 12821, 26257 and 31930.

A careful review of the record convinces the Board that the Organization failed to meet its burden to prove a violation of the Agreement in this case. As found in Third Division Award 36834, a case dealing with a vacation relief situation, the phrase “if relieved” in the second paragraph of Rule 26 does not mandate that relief be assigned, but gives the Carrier the option of providing vacation relief for Maintainers who are off for periods exceeding one week. That case notes that the final paragraph of Rule 26 requires the Carrier, in its exercise of managerial discretion, to show some evidence that it made every effort to provide vacation relief

for Signal Maintainers. Third Division Award 36940 discusses what type of showing of effort is required.

We are not convinced by the Carrier's argument that Rule 26 does not apply in this case because we are dealing with a MLOA and not an absence due to vacation. The predicate to the Carrier's obligation to relieve Signal Maintainers in Rule 26, as noted in paragraph two, is that they "are off for periods that exceed one week in duration." As noted above, that obligation is discretionary, not mandatory, but is not specifically limited to vacation absences. However, the language of the final paragraph of Rule 26, which creates an affirmative obligation on the Carrier to "make every effort" is specifically tied to providing vacation relief for Maintainers off for longer than one week. It is clear that the compensation sought by the Claimant in this case is not for vacation relief, but for relief for a Maintainer on a MLOA. Even if we were to find that the Carrier was obliged to make every effort to provide relief for Moon's position, there appears to be no dispute that it acted properly by bulletining Moon's position as temporary under Rule 51. The record reveals that the Carrier made repeated efforts to fill the position by bulletining it on three consecutive occasions after Neel bid off of it, but was unsuccessful in obtaining any bids until the assignment of Whitley on October 27, 2006. Thus, the Organization failed to establish a violation of Rule 26 in the Carrier's actions with respect to the temporary Maintainer position created by Moon's MLOA.

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 27th day of August 2010.