

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40609
Docket No. SG-40837
10-3-NRAB-00003-090117**

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 T. J. Vaughn, for compensation at the overtime rate for all hours worked on Saturday which should have been his assigned rest day, and eight hours pay at the straight time rate for each Monday he was forced to observe as a rest day until dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rules 1, 5, 51, 56 and 80, when it improperly advertised and assigned the Claimant on August 31, 2007, to an Interlocking Repairman position with assigned rest days of Sunday and Monday. Carrier should be required to post this position with rest days of Saturday and Sunday as provided by the Agreement. Carrier’s File No. 1486527. General Chairman’s File No. N 56 705. BRS File Case No. 14051-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 was a short term Assistant Signalman who bid on bulletined Position No. 1163, i.e., an Interlocking Repairman (IR) at the North Platte, Nebraska, westbound classification yard with Sunday and Monday as rests days, and was assigned effective August 31, 2007. This IR position repairs and maintains various facilities in the hump yard, which operates 24/7 and works with Retarder Yard Maintainers (RYM) who maintain equipment with radar or computer controls on a three shift, 24/7 schedule. The Carrier's rationale for the change of rest days was that this Position No. 1163 was needed to work with the RYM on Saturdays to best provide coverage on the weekend. This claim protests the Carrier's discontinuance of the historical assignment of this IR position as one with Saturday and Sunday as rest days, and the creation of a new position, seeking overtime compensation for Saturdays worked, by the Claimant and straight time compensation for Mondays not worked as well as the posting of the position with Saturday and Sunday as rest days. It relies upon Rules 1 (Seniority Class One) 5 (40-Hour Work Week) 51 (Advertising Positions for Seniority Choice) 56 (Established Positions) and 80 (Loss of Earnings).

As in Third Division Award 40608 the resolution of this claim turns on the following contract language.

"RULE 5 - 40-HOUR WORK WEEK

* * *

GENERAL

There is established for all employees, subject to the exceptions contained in this agreement, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements; so far as practicable the days off will be

Saturday and Sunday. The foregoing work week rule is subject to the provisions which follow:

A. Five-Day Positions

On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

* * *

E. Deviation from Monday-Friday Week

If in positions or work extending over a period of five days per week, an operational problem arises which the carrier contends cannot be met under the provisions of Section A of this Rule, and requires that some such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, and if the parties fail to agree thereon, then if the carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under the agreement."

The Organization argues that the change in schedule should have been the subject of discussion prior to the implementation of the position, because Rule 5(E) requires the Carrier to seek resolution of a deviation of the workweek from Monday through Friday through negotiation with the Organization prior to effectuating the change, citing Third Division Award 31471 and Second Division Award 7041. It contends that the data does not support any operational need for a deviation from the Monday through Friday workweek at this location because it reveals that all weekend service needs were met by regular assignees who are required to make themselves available for such work under the provisions of Rule 16 and that such schedule change would only provide negligible relief from the asserted (but not established) need. The Organization alleges that the type of work performed by the IR can only be done in the absence of train traffic, requiring the hump to shut down, that it is routinely accomplished mid-week rather than on the weekends, and that the amount of such repairs has diminished, not increased. The Organization contends that the Carrier failed to meet its burden to prove its affirmative defense

of need, relying on Public Law Board No. 5565, Award 8; Third Division Awards 20107, 22242 and 35409 and Second Division Award 12015.

The Carrier asserts that the Organization failed to prove a violation of Rules 51, 58 or 80. With respect to Rule 5, the Carrier contends that it has the right to modify rest days under Rule 5(E) if there is an operational need. It argues that it established the need for a Tuesday through Saturday workweek for IR Position No. 1163 by showing (1) the enormous volume of train traffic in the area going through the North Platte rail yard causing a significant number of maintenance issues (2500 within an eight month period, 32% of which occurred on the weekend) (2) the addition of 116 retarders to handle the increase in approximately 71,000 cars during the 2003-2006 period (3) that the IR was needed to work with the RYM who was scheduled to work on Saturdays without objection and (4) that this is a 24/7 operation requiring prompt maintenance to minimize train delays, citing Public Law Board No. 6596, Award 2 and Third Division Awards 30011, 31295, 31298 and 37018. The Carrier also posits that it was having trouble keeping Signal Maintainers available on weekends to cover these trouble calls, necessitating scheduling Saturday coverage to perform the required seven day per week maintenance service. It asserts that the Organization failed to meet its burden to prove a violation of the Agreement in this case.

A careful review of the record convinces the Board that the Carrier met its burden of showing an operational need for the change in rest days occurring in this case. See Third Division Award 36999. As we noted in Third Division Award 40608 the Carrier established a very high volume of train traffic through this rail yard leading to the addition of 116 retarders with the resultant maintenance issues, a substantial number of which occurred on the weekend, and that an IR was needed to work with the RYM on Saturdays. The Organization presented nothing countering this evidence, other than assertions that the amount of work needing to be performed by IRs had decreased. It did not address the Carrier's contention that it was having difficulty keeping Signal Maintainers available on weekends to cover trouble calls under Rule 16, or the fact that the IR was needed to work with the RYM on weekends. Because the presumption of the appropriateness of a workweek with Saturday and Sunday as rest days contained in Rule 5 is rebuttable by a showing of operational need, and that it is not practicable for this to be a Monday through Friday position, we are of the opinion that such a showing has

been made in this case. See Public Law Board No. 6596, Award 2, as well as Public Law Board No. 2960, Award 80.

As we noted in Award 40608 although the Carrier should have engaged in a discussion of necessity with the Organization prior to making the disputed assignment (Third Division Award 31417) there was no established loss of earnings by the Claimant, who still had a five day 40-hour workweek. We are of the opinion that the Carrier met its required showing of operational need for a change in the rest days of this IR position from Saturday and Sunday to Sunday and Monday. Accordingly, the claim is 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 27th day of August 2010.