

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40830
Docket No. SG-40662
11-3-NRAB-00003-080547**

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of L. Peknik, for 12 hours overtime on March 24, 2007, and 12 hours overtime on March 25, 2007, account Carrier violated the current Signalmen's Agreement, particularly Rule 15, when it failed to use the Claimant and instead used another employee for overtime service on March 24 and 25, 2007, and denied the Claimant the opportunity to perform this work. Carrier's File No. 11-21-622. General Chairman's File No. 4-MW-07. BRS File Case No. 14093-NIRC.”

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.

During the week prior to the weekend of Saturday, March 24, and Sunday, March 25, 2007, T. Stone, a Signal Testman on the Carrier's Milwaukee District, was on vacation. Stone had advised his Supervisor that he would be available for scheduled overtime on the weekend after his vacation. The Carrier assigned Testman Stone 12 hours overtime on March 24 and 12 hours overtime on March 25, 2007.

The Organization objects that by calling Testman Stone to work on the weekend following his vacation the Carrier violated the established past practice and Rule 15. The Organization contends that the Carrier has previously taken the position that employees on vacation are unavailable for overtime service on the weekend following that vacation, noting that in denying employees' claims for overtime work following a vacation, the Carrier has relied on such Awards as Third Division Award 27616, which states that "an employee 'has no rights to return to service [from vacation] until the first workday on which he is scheduled to return to work.'" (Quoting from Third Division Award 23198) The Organization asserts that the Board must recognize and enforce this past practice of considering employees to be unavailable for service on the weekend following vacation. In contrast, the Carrier's position here is that it has a past practice of allowing employees to work on rest days following their vacation if they advise their Supervisor that they are available, and that nothing in the Agreement forbids the Carrier from working a senior employee the weekend after a vacation.

Rule 15 provides that "When overtime service is required of a part of a group of employees who customarily work together, the senior qualified available employees of the class involved shall have preference to such overtime if they so desire." (Emphasis added) It is true that the Carrier has repeatedly taken the position that it is not required to assign overtime work to an employee on a rest day following vacation, following the reasoning that "an employee has no rights to return to service until the first workday on which he is scheduled to return to work." However in the cases cited, there is no indication that the employees passed over had notified their Supervisor that

they would be available for overtime prior to the date on which they were scheduled to return to work.

The Rule cited by the Organization (and, as indicated, by the Carrier in other circumstances) spares the Carrier from having to expend effort to track down vacationing employees who may be difficult to contact. However, there is no indication that any of the employees whom the Carrier considered unavailable on rest days following their vacation had informed their Supervisor that they would be available if needed. Thus, this practice does not conflict with the Carrier's practice of treating as available employees who notify their Supervisors in advance that they will be available on the rest days between the end of their vacation and their scheduled return to work.

The Carrier is correct that the Organization identified no Rule or other provision of the Agreement that barred the Carrier from assigning the overtime to Testman Stone, who was senior to the Claimant, and there is no evidence in this record that the Carrier abused its discretion in assigning the overtime to Testman Stone. For all these reasons the Board denies the claim.

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 11th day of January 2011.

Labor Member's Dissent
to
Third Division Award 40830 (SG-40662)
Referee Lisa Salkovitz Kohn

The undersigned respectfully objects to and dissents from the Board's Award No. 40830, dated March 10, 2011.

This Award is wrong in that it ignores a long line of precedent, which effectively states that when an employee goes on vacation, the employee is not entitled to return to service until the first workday the employee is scheduled to return to work. (See Third Division Awards 10869, 23198, 27616, and numerous others.)

All three of the above-cited Awards use virtually identical language which states: "*...when an employee goes on vacation, he has no rights to return to service until the first work day on which he is scheduled to return to work.*"

Consistent with the above-cited and numerous other Awards, the Carrier had previously taken the position that employees who take vacation are unavailable for overtime service on the rest days following their vacation.

In this case, a vacationing employee notified his supervisor that he would be available to work overtime on his rest days following his scheduled vacation. The employee was subsequently assigned overtime work on both of his rest days, which were before his assigned first workday following his vacation.

As a result, the Organization filed a claim for another employee who was not on vacation and was available to work the overtime assignment.

The Neutral Member in this case ignores a long line of precedent and past practice when it found that the Carrier had not violated the Agreement when it assigned overtime to an employee who had not yet returned to his regular duty assignment following his vacation and subsequent rest days instead of assigning the work to the Claimant.

The Neutral Member in this case relied on the Carrier's flawed argument that it may assign overtime on rest days following vacation if the employee advised his supervisor that he was available for such duty.

In addition, the Neutral Member chose to ignore the Carrier's own past practice of considering employees unavailable for duty on rest days following their vacation.

The Neutral Member disregarded accepted interpretation, precedent, and past practice with respect to the determination of when an employee is entitled to return to service following a

vacation. The conclusion of the Board is counter to numerous previous Awards and is therefore defective and erroneous. Consequently, Third Division Award No. 40830 is without precedential value, and I must vigorously dissent.

A handwritten signature in black ink, appearing to read "KH Haley". The signature is stylized with a large, looped "H" and a cursive "Haley".

Kelly Haley
NRAB Labor Member
Vice President — NRAB
Brotherhood of Railroad Signalmen