

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40897
Docket No. SG-40812
11-3-NRAB-00003-090058**

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 K. P. Lavin, for eight hours halftime pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 15, 51, and Side Letter dated April 15, 1994, involving Supplement No. 2, when on June 27, 2007, it compensated Claimant at the straight time rate of pay instead of the Agreement guaranteed overtime rate of pay for service performed on his assigned rest day. Carrier's File No. 11-21-623. General Chairman's File No. 106-RI-07. BRS File Case No. 14163-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.

At all times relevant to this dispute, the Claimant was assigned to a Signal Gang on the Rock Island Engineering District as the Vacation Relief Signal Maintainer, a monthly rated position. The position's scheduled hours were 7:00 A.M. to 3:00 P.M., Monday through Friday, and relief duties as assigned. On June 25, 2007, the Claimant worked on his regularly scheduled position. On Tuesday June 26, 2007, he had a rest day. On Wednesday, June 27, 2007, he was assigned to perform relief for the second shift Root Street Signal Maintainer, a position on which the scheduled workweek is Saturday through Wednesday. He was paid at the straight time rate of pay for his work on June 27, 2007 (a rest day for the Mokena Territory position), which the Claimant had previously been assigned to relieve, but it was not a rest day for the Root Street Signal Maintainer position.

Citing Rules 15, 51, and the Side Letter to Supplement No. 2 dated April 15, 1994, the Organization asserts that the Claimant was entitled to pay at the overtime rate on June 27, 2007, because that was the rest day of the second shift Mokena Territory Maintainer, the previous position to which he had been assigned. The Carrier contends that the Claimant, as a monthly rate employee, was properly compensated, citing, among other authorities, Public Law Board No. 5255, Award 2.

It is useful to establish up front the Rules and Agreements relevant to this dispute. Rule 15, provides that "Service rendered by an employee on his assigned rest day or days, relieving an employee regularly assigned to work such day shall be paid a minimum of eight (8) hours at one and one-half the basic straight time rate and consistent with Rule 21." (Emphasis added). The Organization asserts that Rule 15 governs this situation, reasoning that this is required by Rule 51:

"Monthly rated employees will have Sunday as assigned rest day, if possible. For service performed on assigned rest day, rules applicable to other employees of the same class shall apply as provided in Rule 15 and 17."

When the parties entered into Supplement No. 2 to the General Rules Agreement dated March 1, 1984, creating the Vacation Relief Man positions on the NIRCRC Rock Island District to provide vacation relief, they agreed that:

* * *

“3. The Vacation Relief Men will be assigned to relieve certain Signal Maintainers while on vacation and shall be paid the Signal Maintainer rate of pay.

4. In the event there is a period when the Vacation Relief Man has no vacation relief assignment, he may be used to perform other relief assignments and such other signal work that may be assigned.

5. When performing relief service, Supplement 2 of the March 1, 1984 Agreement provides that a Vacation Relief employee will assume the duties, assigned hours, assigned rest days and headquarters point of the position that he is relieving.” (Emphasis added.)

Subsequently, Supplement No. 2 was amplified by a letter dated April 15, 1994, in which the Carrier agreed to “make its best effort to bulletin Vacation Relief Signal Maintainer’s positions Monday through Friday, sixth-day Saturday and rest-day Sunday.” The letter also provided:

“In event the above arrangement does not meet the needs of service, the vacation relief employee will observe the work week, sixth-day and rest-day of the assignment relieving before performing additional service. In any event, the vacation relief employee will not be required to work more than eight (8) consecutive days when commingling at the straight time rate of pay.”

The Organization concludes from these provisions that because the Claimant’s previous relief assignment had June 27, 2007, as a rest day, he should have been paid overtime when he was required to work that day on his next relief assignment.

In Public Law Board No. 5255, Award 2, issued in September 1993, PLB 5255 held that an employee providing vacation relief under Supplement No. 2 was not entitled to overtime pay for work performed in relief on Saturday and Sunday after he had worked his regular Monday through Friday schedule. The Board reviewed Rule 15's provisions for pay for work over 40 hours, but in light of Supplement No. 2, as it existed at the time, held:

“This Board concludes that Supplement No. 2 is controlling and Rule 15 is not applicable in this dispute. Thus, the Claimant, who was properly assigned to another vacancy by the Carrier assumed ‘the duties, assigned hours, assigned rest days and headquarters . . .’ and was properly compensated by the Carrier. Rule 15 is only applicable when the conditions of Rule 51 are met and such was not the case in this claim. The Board notes that Supplement No. 2 was drafted and agreed to by the parties to create the position of Vacation Relief Signal Maintainer and if the parties had intended to incorporate Rule 15 as controlling they would have done just that.”

The Board agrees with the analysis of PLB 5255. The overtime provisions of Rule 15 Section 1 (b) are not applicable to Vacation Relief positions because they are monthly rated positions. Supplement No. 2, as the newer and more specific provision applicable to employees on Vacation Relief positions, was intended to be applied to determine the assignment and compensation for employees in those positions, notwithstanding the more general provisions of Rule 15. However, that Award is not the end of the inquiry because the Carrier and the Organization subsequently issued the letter dated April 15, 1994, amending Supplement No. 2. That letter is even more specific, permitting the Carrier to assign vacation relief duties outside the Vacation Relief Maintainer's regular schedule. In that case, the Vacation Relief employee takes “the workweek, sixth-day and rest-day of the assignment relieving,” provided however, that “the vacation relief employee will not be required to work more than eight (8) consecutive days when commingling at the straight time rate of pay.” In other words, the Vacation Relief employee on a relief assignment takes the workweek, sixth-day, and rest-day of that assignment, not of a prior relief assignment. As the letter indicates, the parties contemplated that this might result in the employee working up to eight consecutive days (but no more than eight) at the straight time rate of pay.

The Organization appears to contend that the relief employee must complete “the workweek, sixth-day and rest-day” of a relief assignment before the Carrier can assign the relief employee to a new relief assignment with a different work schedule. However, nothing in the letter dated April 15, 1994, indicates that it was the parties’ intent to restrict the Carrier’s right to assign Vacation Relief employees other than to limit them to eight consecutive days at the straight time rate of pay. Such a restriction would severely limit the utility of the relief employees, and the Organization failed to show that this was the parties’ intention.

Supplement No. 2 also restricts the application of Rule 51 to Vacation Relief employees. Rule 51 requires that service performed by a monthly rated employee on an assigned rest day shall be subject to Rules applicable to other employees of the same class as provided in Rules 15 and 17. In this case, the Claimant had taken a rest day on June 26, 2007, and was subject to the workweek, sixth day, and rest day of the second shift Root Street Signal Maintainer when he worked that relief assignment on June 27, 2007. The schedule of his prior relief assignment was no longer applicable. Because June 27, 2007, was part of the regular workweek for the second shift Root Street Signal Maintainer assignment, the Claimant did not work on an assigned rest day, and Rule 51 did not apply. Because the Claimant did not work more than eight consecutive days at the straight time rate, he was not entitled to overtime compensation for his work on June 27, 2007, under Rule 15 or Supplement No. 2, as amplified by the April 15, 1994, letter. 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 10th day of March 2011.