

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40900
Docket No. SG-40957
11-3-NRAB-00003-090296**

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 C. Cross, for eight hours at the overtime rate and eight hours at the half-time rate of 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 it worked the Claimant at the straight time rate of pay instead of at the Agreement guaranteed overtime rate when he performed ordinary maintenance work on his assigned sixth day and rest day on December 20 and 21, 2007. Carrier’s File No. 11-21-647. General Chairman’s File No. 102-ME-08. BRS File Case No. 14208-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 the Vacation Relief Signal Maintainer on the Rock Island Engineering District, 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. Prior to the claim dates the Claimant performed relief for the Relief Shift (Swing Shift) Signal Maintainer assigned to the 67th Street Interlocking. This position works rotating shifts with a workweek from Saturday through Wednesday, covering the off days of the first and second shift Maintainers assigned to that location. The Claimant worked on Thursday, December 20 and Friday, December 21, 2007, as the second shift Signal Maintainer at the 67th Street Interlocking. He was compensated at his straight time rate of pay for those days. Although Thursday and Friday were the sixth day and rest day for the 67th Street Interlocking Relief Shift Signal Maintainer, they were regular work days for the second shift Signal Maintainer.

The Organization claims that the Carrier violated Rules 15, 51, and the Side Letter to Supplement No. 2 dated April 15, 1994, because the Claimant did not receive the overtime rate for his service on December 20, 2007, the assigned sixth day for the Relief Shift Signal Maintainer, and because he is entitled to an additional eight hours pay at his half time rate for service on December 21, 2007, the assigned rest day for the Relief Shift Signal Maintainer. The Carrier submits that the Claimant was properly compensated because, at the time of his service on December 20 and 21, 2007, he was assigned to relieve the second shift Signal Maintainer, and those days were regular work days for that position.

The Board already addressed many of the contentions raised here in Third Division Awards 40897, 40898 and 40899. As discussed in those Awards, we have concluded that under Supplement No. 2 and the Side Letter dated April 15, 1994, the Vacation Relief employee assumes the assigned work days, sixth day and rest day of the position that the employee relieving, but cannot be required to work more than eight consecutive days at the straight time rate of pay. We also concluded that nothing in either Supplement No. 2 or the Side Letter dated April 15, 1994, grants a Vacation

Relief Maintainer more than the Signal Maintainer's monthly rate during the assigned hours of the relieved position, with only one exception: If a Vacation Relief employee works more than eight consecutive days at the straight time rate, then the employee is entitled to a half-time penalty in addition to receiving compensation based on the monthly rate. Other than that situation, the Vacation Relief employee is entitled to no more than the Signal Maintainer's monthly rate of pay for all hours worked, either on his regular assignment, or when relieving a vacationing employee, or when performing other relief assignments or signal work, as permitted by Supplement No. 2. In particular, the parties' Side Letter dated April 15, 1994, which permits the Carrier to assign a Vacation Relief Signal Maintainer to work up to eight consecutive days at the straight time rate, makes it clear that the provision in Rule 51, prohibiting monthly rated employees from performing "ordinary maintenance or construction" on the sixth day of the workweek or on recognized holidays, does not apply to the relief work performed by Vacation Relief Signal Maintainers. As long as the Vacation Relief employee is not worked more than eight consecutive days on assignments permitted under Supplement No. 2 and the Side Letter, the employee is not entitled to compensation beyond the straight time rate.

In this case, however, the critical question is which position the Claimant was working on December 20 and 21, 2007. The Organization is correct that those dates were the sixth day and rest day, respectively, for the Relief Shift Signal Maintainer. It is also undisputed that the Claimant's assignment prior to December 20, 2007, was to relieve the Relief Shift position. On the other hand, the Carrier asserts that the Claimant was assigned as of December 20 and 21, 2007, to relieve the second shift position, and took on the workweek, sixth day and rest day of the second shift position for those dates. The Carrier reasons that because December 20 and 21, 2007, were regular work days for the second shift position, and because the Claimant did not work more than eight consecutive days at his straight time rate, no additional compensation is required.

It is useful to consider the Claimant's work record for the period preceding and following the days at issue:

Thursday, 12/13/2007	Rest day	67 th Street Interlocking Relief Maintainer
Friday, 12/14/2007	Rest day	67 th Street Interlocking Relief Maintainer
Saturday, 12/15/2007	Vacation day (reg. day)	67 th Street Interlocking Relief Maintainer
Sunday, 12/16/2007	Personal day (reg. day)	67 th Street Interlocking Relief Maintainer

Monday, 12/17/2007	Reg. work day	67 th Street Interlocking Relief Maintainer
Tuesday, 12/18/2007	Reg. work day	67 th Street Interlocking Relief Maintainer
Wednesday, 12/19/2007	Reg. work day	67 th Street Interlocking Relief Maintainer
Thursday, 12/20/2007	Reg. work day	67 th St. Interlocking 2 nd Shift Maintainer (Carrier)
	OR Sixth day worked	67 th St. Interlocking Relief Maintainer (Org.)
Friday, 12/21/2007	Reg. work day	67 th St. Interlocking 2 nd Shift Maintainer (Carrier)
	OR Rest day worked	67 th St. Interlocking Relief Maintainer (Org.)
Saturday, 12/22/2007	Reg. work day	67 th Street Interlocking 2 nd Shift Maintainer
Sunday, 12/23/2007	Reg. work day	67 th Street Interlocking 2 nd Shift Maintainer
Monday, 12/24/2007	Holiday worked	

Thus, the Claimant continued to work on the second shift assignment for at least two days after the disputed dates. The Organization does not dispute that the Claimant was relieving the second shift position on those later dates.

The Organization has the burden of proof. In the instant case, it failed to override the Carrier's assertion that the Claimant was relieving the second shift Signal Maintainer on December 20 and 21, 2007, and that the Claimant was therefore working on the regular work days of the position that he was relieving. The Board recognizes that there is an inherent ambiguity in the Claimant's status when he relieves a "relief shift" position that, in turn, serves to relieve other positions. Is he relieving the relief shift worker, or the worker that the relief shift worker would also relieve? However, the Organization presented no evidence to contradict the Carrier's position that the Claimant's assignment changed from relieving the Relief Shift Maintainer to relieving the second shift Signal Maintainer, effective December 20, 2007, an assignment that continued at least through December 23, 2007.

On the one hand, the purpose of the Vacation Relief position is precisely to provide the Carrier with the flexibility not only to assign the employee to vacation relief but also to "other relief assignments and such other signal work that may be assigned." The Relief Shift employee would have been working outside his regular work days had he been available to relieve the second shift Signal Maintainer, but Supplement No. 2 gives the Carrier the right to assign that relief work directly to the Claimant. On the other hand, the Organization contends that the Carrier's implementation of Supplement No. 2 in this case permitted it to evade an obligation to pay the Claimant at the overtime rate for work on the position's sixth day, and penalty pay for work on the position's assigned rest day. But the Organization has not identified any provision that forbids the Carrier's interpretation of Supplement No. 2.

Where the situation is subject to equally plausible interpretations, the moving party has failed to meet its burden. The claim must be denied in the absence of any overriding evidence that this assignment otherwise constituted an abuse of the Carrier's discretion under the applicable provisions.

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.