

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41802
Docket No. SG-40060
13-3-NRAB-00003-070279

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Wheeling & Lake Erie Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Wheeling And Lake Erie:

Claim on behalf of C. J. Brewer, D. J. Gribben, B. Hannahs, B. A. Heathrington, J. C. Johnson III, S. D. Krockner, D. L. Sampsel III, J. Tennill, D. L. Tillapaw, S. Valentine, R. W. Harbert and J. Kelly, Carrier should now be required to compensate each Claimant as follows:

C. J. Brewer, D. J. Gribben, B. Hannahs, B. A. Heathrington and J. C. Johnson, III - 21 hours' pay at the time and one-half rate of pay (three hours' pay at the time and one-half rate for each day starting time was changed) 1,260 miles at the approved IRS Mileage allowance of 44.5 cents a mile (166 miles for March 14, 2006, travel to Brewster, 210 miles each day for March 15, 16, 20, 21, 22, and 23, 2006, travel to Smithville). The above Claimants were headquartered at Mingo, Ohio.

D. L. Tillapaw, D. L. Sampsel, III and S. D. Krockner - 21 hours' pay at the time and one-half rate of pay (three hours' pay at the time and one-half rate for each day starting time was changed). 288 miles at the approved IRS Mileage allowance of 44.5 cents a mile (48 miles each day for March 15, 16, 20, 21, 22, and 23, 2006, travel to Smithville) Claimant J. Kelley - 12 hours' pay at the time and one-half rate of pay (three hours' pay at the time and one-half rate for each day starting time was changed on March 20, 21, 22, and 23, 2006). 192 miles at the approved IRS Mileage allowance of 44.5 cents a mile (48 miles each day for March 20, 21, 22, and 23, 2006, travel to Smithville). The above Claimants were headquartered at Brewster, Ohio.

R. W. Harbert, J. Tennill and S. Valentine - 21 hours' pay at the time and one-half rate of pay (three hours' pay at the time and one-half rate for each day starting time was changed). 397 miles at the approved IRS Mileage allowance of 44.5 cents a mile (37 miles for March 14, 2006, travel to Brewster, 60 miles each day for March 15, 16, 20, 21, 22, and 23, 2006, travel to Smithville). The above Claimants were headquartered at Akron, Ohio.

Account Carrier violated the current Signalmen's Agreement, particularly Rules 13 and 34, when on March 23, 2006, it ordered the Claimants to change their payroll records for March 14, 15, 16, 20, 21, 22 and 23, 2006, and had them remove mileage and overtime pay for those dates that they were required to work away from their assigned headquarters positions. General Chairman's File No. 06-009-MOFW-13-34. BRS File Case No. 13792-W&LE(MofW)."

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.

This case apparently had its beginning when, during a safety luncheon in Pittsburgh in March 2006, an unidentified employee asked the Director of Human Resources if the Carrier intended to reestablish a production tie gang, because he was tired of driving from Akron, Ohio, to Mingo Junction, Ohio, to go to work every day. Eventually, the Carrier bulletined positions on the gang and a number of employees who had bid were placed on the gang before the bids were closed and the jobs were awarded. The Organization filed this claim asserting that the employees filling the jobs pending bulletin assignment are entitled to the contractual benefits afforded to employees who are required to work away from their regular headquarters. Although

the gang did not have a regular headquarters, the positions to which the Claimants were regularly assigned were headquartered positions. While the Organization argues that all but one or two of the Claimants were force-assigned to the gang positions during this interval, the Carrier responds that they volunteered for the jobs.

At the outset, the Board notes that four Claimants (D. J. Gribben, J. Tennill, J. C. Johnson, III, and J. Kelley) resigned from the Carrier's service on April 13, 2006, May 8, 2008, May 30, 2008 and June 25, 2008, respectively. In doing so, they each signed a resignation notice that released the Carrier ". . . from any and all claims or liability out of my employment or resignation from employment with the Company." The Board finds that those releases effectively negated the claims on behalf of these four Claimants and they are not entitled to any relief under this Award.

With respect to the Carrier's assertion that the remaining Claimants had volunteered for this work, the Board finds that whether they did or not has no bearing upon their entitlement to the benefits of the parties' Agreement. Even if they were free, under the provisions of the Railway Labor Act, to enter into individual agreements to waive provisions of the parties' Agreement, there is no evidence that they did so. Furthermore, the fact that they submitted bids to be assigned to the gang did not mean they volunteered to work the job pending bulletin assignment. Rule 23(E) states, "A position or vacancy under bulletin may be filled temporarily pending assignment." The Rule does not make clear how that position is filled pending assignment, but there is no language that automatically places a bidder on the temporary vacancy. Until formally assigned by bulletin, the employees retained their regular bulletined positions and the conditions that apply to those positions.

The Organization relies upon Rule 13 - Calls and Rule 34 - Service Away from Headquarters in support of its claim. These provisions read, in pertinent part, as follows:

"13.(A) An employee notified or called to perform work outside of his regular work period will be paid a minimum of three (3) hours at time and one-half rate and if held on duty in excess of three (3) hours, time and one-half will be allowed on the minute basis."

"34.(E) An employee who is not furnished means of transportation by the Carrier from one work point to another and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such transportation. If he chooses to use his personal automobile for

this purpose in the absence of transportation furnished by the Carrier, he shall be reimbursed for such use of his automobile at the approved automobile mileage allowance for the mileage from one work point to another at the rate established by the Internal Revenue Service.”

Because the Claimants were still assigned to their regular positions while working on the tie gang pending bulletin assignment, the Board finds that Rule 34.(E) was applicable to them and they are entitled to the mileage allowance provided therein when required to report to a location other than their regular headquarters. The Board does not find, however, that Rule 13.(A) was applicable in this instance. The claim for overtime pay, therefore, is without merit.

The Carrier is directed to compensate the Claimants, other than those who had resigned, the mileage payments claimed. The balance of the claim is denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 17th day of December 2013.