

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30184  
Docket No. SG-29990  
94-3-91-3-389

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Norfolk and Western Railway Corporation

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Norfolk and Western Railroad:

Claim on behalf of S. A. Dunn, Jr., Signal Maintainer, Narrows, Virginia; assigned hours 7:00 A.M. to 4:00 P.M. Mondays through Fridays; meal period 12:00 noon to 1:00 P.M.; rest days Saturdays and Sundays, that:

- A) Carrier violated the rules of the Signalmen' Agreement, in particular the forty Hour Work Week Agreement, effective September 1, 1949, and Rule 305C(1) of the current Signalmen's Agreement, when Carrier changed the rest days of Mr. Dunn's position from Saturday and Sunday to Friday and Saturday.
- B) Carrier now pay Mr. Dunn eight hours at the straight-time rate of pay for each Friday he is required to be off from work on his regularly assigned workday, and eight hours at the time-and-one-half rate of pay for each Sunday he is required to work on his regularly assigned rest day, for the violation cited in part A.
- C) This Claim is filed as a continuing violation in accordance with Rule 700(d) beginning sixty days prior to the date filed for as long as the above violation continues." Carrier file SG-ROAN-90-12. G.C. file SG-ROAN-90-12. BRS Case No. 8465. N&W.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Rule 305, Work Week, reads in pertinent part as follows:

"(c) The work week of all employees shall be forty (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 Company's operational requirements; so far as practicable the days off shall be Saturday and Sunday. This paragraph (c) is subject to the provisions of this Agreement.

(1) Five-day Positions - On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday, except if an operational problem arises which the Company contends cannot be met under this paragraph (c) (1) and requires that some of 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 Company nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under this agreement."

The Claim initiated on May 15, 1990, refers to the Claimant, a Signal Maintainer, as having "assigned hours 7:00 A.M. to 4:00 P.M. Mondays through Fridays." The Claim goes on to contend that the "Carrier changed the rest days" of the Claimant's position "from Saturday and Sunday to Friday and Saturday."

The initial Carrier response stated that the Claimant "was properly notified of a change in his rest days to Friday and Saturday." At the next appeal level, however, the Carrier responded as follows:

"Our record indicate that [the Claimant] made application for the position of Signal Maintainer, Narrows, Virginia in response to Bulletin No. 177 dated August 4, 1987. Bulletin No. 177 listed the rest days of Signal Maintainer, Narrows, Virginia, as Friday and Saturday. [The Claimant's] rest days have not been changed since he first made application for and was awarded said position."

Thereafter, the Organization acknowledged receipt of this information, without contradicting it, but went on to argue that the Agreement "clearly prohibits the Carrier from having a position with the work week they have assigned" to the Claimant.

Since there is no dispute that the Claimant bid on a position with Friday-Saturday rest days, the Claim stating that his work week was "changed" is without foundation.

The Organization relies on Public Law Board No. 4715, Award 2, involving the same parties, which sustained a Claim as to a unilateral change in rest days. This is of no guidance, since, as noted, there is no "change" in work week here.

As to the revised Claim that the designated work week is prohibited, the Carrier notes that the Claim was made two and one-half years after the position was bulletined and filled by the Claimant. On this basis, the Carrier argues that the Claim is untimely under Rule 700 (a), requiring a claim to be filed "within 60 days from the date of the occurrence."

The Organization responds by contending that this is an "alleged continuing violation" as covered in Rule 700 (d) and thus can be initiated at any time the "violation" continues, subject only to a limit in retroactive application.

The Board concludes that this is not a "continuing" violation in the generally accepted sense. Here, the "alleged violation" was the bulletining of a position in 1987. There was ample opportunity for the Claimant or the Organization to initiate a claim, either before or immediately after the Claimant accepted the position. Rule 700 (a) is clearly applicable. As stated in Second Division Award 6987:

"This Board has long held that a claim is not a continuous one where it is based on a specific act which occurred on a specific date. While a continuing liability may result, it is settled beyond question that this does not create a continuing claim."

#### A W A R D

Claim dismissed.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Linda Woods  
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.