Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 31250
Docket No. SG-31380
95-3-93-401

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Chicago & Northwestern Transportation
(Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago and Northwestern Transportation Company (CNW):

Claim on behalf of G.R. Remrey for payment of 45 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly Article 6 and Article 10 of the Vacation Agreement when it failed to assign an employee to relieve the Pekin maintenance territory during the incumbent's vacation period and required the Claimant to assume more than 25 percent of the position's workload from April 20 to May 11, 1992."

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 waived right of appearance at hearing thereon.

The facts are not in dispute. One of two Signal Maintainers assigned to the territory in question took three weeks, or 120 hours, of vacation between April 20 and May 11, 1992. Carrier did not provide a relief Maintainer during his absence. At the time, Claimant held a Signal Inspector assignment. The Agreement permits Inspectors to perform any signal department work. On six days between April 20 and May 1, Claimant was assigned to follow a track gang and perform any signal repair work made necessary by the activities of the track gang. On these six days, Claimant worked a total of 45 hours.

On the property, the Organization asserted, in its August 19, 1992 correspondence, that the vacationing employee would have been assigned to follow the track gang had he not been on vacation. Carrier did not challenge this assertion.

Sections 6 and 10(b) of the National Vacation Agreement, which was applicable to this situation, provide as follows:

> "6. The carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the carrier shall not be required to provide such relief worker.
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> 10b. Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work is agreed to by the proper local union committee or official."

Carrier raises several defenses to the Claim. It says that following the track gang was not regular or routine Maintainer work nor did the work "burden" Claimant within the meaning of the Agreement. It also notes that Claimant has been paid his higher Inspector rate of pay for all hours spent with the track gang and, therefore, has been fully compensated. In addition, it asserts that Claimant is not a proper Claimant.

The Board concludes it is not necessary to determine whether Claimant was improperly burdened, under Section 6, since the facts of this record rather clearly establish that Carrier violated Section 10b. It is noted that Section 10b speaks in terms of limiting the Carrier to distributing no more than 25% of a vacationing employee's "work load." It does not limit its application to only regular or routine duties. It is also established, by virtue of the Organization's unchallenged assertion, that such track gang work would have been part of the vacationing employee's work load had he not been absent. The total of 45 hours of such work exceeds the 25% limitation imposed by Section 10b, which, in this case, was 30 hours.

The Board also finds the requested remedy to comport with prior decisions of this Division that have addressed similar claims under Sections 6 and 10b of the National Vacation Agreement. See Third Division Awards 17843, 18433, 19990 and 20056. Accordingly, the Claim should be sustained as presented.

AWARD

Claim sustained.

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 1st day of November 1995.