

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 34174
Docket No. SG-34604
00-3-98-3-266

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad (UP):

Claim on behalf of J.L. Christopherson for payment of nine hours at one-half the straight time rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 3 and 9, when it did not pay the Claimant at the time and one-half rate for hours worked outside of his regular assignment on March 2 and 7, 1997. Carrier’s File No. 1065819. General Chairman’s File No. 76034895.2. BRS File Case No. 10638-UP.”

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 issue in this case is the interpretation and application of the language of Appendix 9-B. That provision reads as follows:

- "1. Fixed Headquartered Signal Gangs established in accordance with Memorandum of Agreement dated November 8, 1972, will, unless being held to perform services on a holiday or their rest days or traveling conditions do not permit, be returned to their headquarters for rest days and holidays. Such employees, including the foreman, will be compensated at straight-time rate for travel time involved whether within the assigned working hours or outside the assigned working hours while operating or riding in a Company vehicle or traveling by a commercial means of transportation as may be authorized by Management.**
- 2. It is further agreed that, if the employees referred to above are held away from headquarters for rest days or holiday service, they will be allowed a minimum of eight (8) hours at time and one-half rate for a single one day holiday or for the two day rest period."**

The basic facts of the case are undisputed. On Sunday, March 2, 1997, a rest day for the Claimant, he spent five hours traveling from his assigned headquarters in Pocatello, Idaho, to his gang's work location at Ontario, Oregon. On Friday, March 7, 1997, the last day of his work week, the Claimant spent four hours traveling from Ontario to Pocatello. He was compensated at the straight time rate for all hours of travel.

The Organization maintains that the Claimant should have been paid at the rate of time and one half for both trips. The Carrier contends that Appendix 9-B clearly establishes a rate of straight time compensation for travel irrespective of when the travel takes place. In addition to Appendix 9-B, the Carrier cites Rule 3(k), which reads as follows:

"There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be used for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime."

A careful reading of Rule 3(k) indicates that its intent is to establish guidelines for calculation of a 40-hour week, prior to awarding overtime if any is appropriate. The Organization is not claiming that the travel time counts as part of any calculation for a 40-hour work week. On the contrary, there is no dispute on this record concerning whether the Claimant worked at least a 40-hour week after arriving in Ontario, and before leaving for Pocatello. Accordingly, Rule 3(k) is inapplicable in this case.

With respect to Appendix 9-B, the Carrier is correct that when the Claimant was being returned to his headquarters for his rest days on Friday (a total of four hours), he was not entitled to payment at the penalty rate for time spent. However, Appendix 9-B clearly refers to returning employees to their headquarters for rest days and holidays. It does not address travel on those rest days. Appendix 9-B does not address that matter. It deals solely with the consequences of employees having to travel after normal work hours to get back to their assigned headquarters for their rest days (not during their rest days). The travel required of the Claimant on Sunday, March 2, 1997, took place on his rest day. He was, therefore, deprived of the full two rest days to which he would have been entitled. Under such circumstances, he is entitled to payment at the time and one-half rate for the time traveled on his rest day (a total of five hours). Since he has already received payment at the straight time rate for the hours in question, the Claimant is entitled to receive one-half pay for the five hours traveled on Sunday, March 2, 1997.

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 20th day of July, 2000.