

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35979
Docket No. SG-35284
02-3-99-3-144**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 (former Missouri Pacific):

Claim on behalf of R. M. Urban for all lost wages accrued to date and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rule 7(a) and the Memorandum of Agreement dated May 12, 1993, when it arbitrarily changed the Claimant’s work hours and rate of pay. Carrier’s File No. 1119149. General Chairman’s File No. 98-28-TA. BRS File Case No. 10909-MP.”

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.

The Claimant held a monthly rated Communication Technician position at Fort Worth, Texas, which, under Rule 7, was compensated based on 213 hours per month. The Claimant submitted a Family Medical Leave Act request due to his son’s medical condition.

Based on medical documentation submitted by the Claimant, the Carrier determined that the medical condition of the Claimant's son required the Claimant to be at home Monday through Friday from 4:30 P.M. until 7:00 A.M. and 24 hours per day on Saturday and Sunday. The Carrier concluded that the Claimant was limited to working only 40 hours per week, or 176 hours per month. Based on its conclusion that because of the FMLA request the Claimant was no longer available to work after his regular working hours and weekends (which the Organization appears to dispute, asserting that the Claimant only needed to be away from work on an as needed basis), and because it concluded that FMLA leave is uncompensated leave, the Carrier recalculated the Claimant's monthly rate based on 176 rather than 213 hours and reduced the Claimant's monthly pay. This claim followed.

Although couched in terms of assertions of violations of Rule 7(a) and the May 12, 1993 Memorandum of Agreement, close review of the Organization's arguments shows that the real basis for its position concerning the Claimant's entitlements is the assertion that the Carrier's actions violated the provisions of the FMLA. Therefore, this is not a dispute under the Agreement. Under the limited circumstances of this case, it is not the Board's function to determine the nuances of the FMLA. That job falls to the Department of Labor and the courts. We therefore lack jurisdiction to consider this dispute. Accordingly, the claim is dismissed.

AWARD

Claim dismissed.

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 19th day of March, 2002.