

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37066
Docket No. SG-37699
04-3-03-3-23

The Third Division consisted of the regular members and in addition Referee James E. Mason 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 (UP):

Claim on behalf of K. L. Hopwood, for 48 hours at his time and one-half rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 5, 13 and 80, when it required the Claimant to stand by for trouble calls on the weekend of October 13 and 14, 2001, and then failed to compensate the Claimant for this service. Carrier's File No. 1298542. General Chairman's File No. N5 13-238. BRS File Case No. 12269-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.

The Claimant was assigned to the position of Signal Maintainer at Marshalltown, Iowa. October 13 and 14, 2001, were assigned rest days of the Claimant's assignment. The dispute as set forth in the Statement of Claim, *supra*, centers around a contention by the Organization that the Claimant was ordered by the Carrier to hold himself available for service on the two claim dates.

The Organization argues that this alleged "order" to stand by violated the provisions of RULE 5 - 40 HOUR WORK WEEK, RULE 13 - OVERTIME and RULE 80 - LOSS OF EARNINGS of the negotiated Rules Agreement.

The case file clearly shows that the Claimant was not called for and did not perform any work or service on the weekend in question.

From a review of the case record, it is apparent that the foundation of this claim is found in an off-the-cuff remark made to the Claimant by a Supervisory official in which the Supervisor commented "looks like you're it for this weekend."

The Board reviewed the Rules as cited by the Organization. We are unable to find any correlation between the clear language of the cited Rules and the innocuous, off-hand remark as made by the Supervisor. The Claimant did not work more than 40 hours in his workweek so Rule 5 has no application here. The Claimant did not perform any overtime work on the claim dates so Rule 13 has no application here. The Claimant did not suffer any loss of earnings because of a violation or misapplication of any portion of the Rules Agreement so Rule 80 has no application here. In short, the Organization failed to make a *prima facie* case to support its claim of a violation of the cited Rules.

Therefore, the claim is denied.

AWARD

Claim denied.

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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 22nd day of June 2004.