

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37085
Docket No. SG-36513
04-3-00-3-754

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Union Pacific Railroad Company (former Chicago
(and North Western Transportation Company)

STATEMENT OF CLAIM:

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

Claim on behalf of the employees assigned to Signal Gang numbers 3734, 3739, 3748, 3777, and 3991, for payment of an additional half-time for all hours worked on their proper rest days (Saturday or Sunday) and for payment of eight hours each at the straight time rate for being prevented from working their normal assignments on either Monday or Friday, beginning on April 20, 1999, and continuing for the term of the violation, account Carrier violated the current Signalmen’s Agreement, particularly Rule 5, when it assigned the Claimants improper rest days. Carrier’s File No. 1200964. General Chairman’s File No. 9c051739. BRS File Case No. 11359-C&NW.”

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.

On September 7, 1998, the Carrier, because of operational necessities, rearranged its signal forces on the five numbered signal gangs operating on three of the Carrier's subdivisions and created some five-day, some six-day and some seven-day assignments with staggered workweeks. This operation functioned as structured without incident or complaint from the Organization from September 7, 1998 until June 20, 1999, when the claim that is the subject of this dispute was initiated. The claim was handled at each level of the grievance procedure and is now before the Board for final determination.

The Organization's initial argument alleged that the rearrangement of assignments created a "continuing claim" and was therefore properly filed within the provisions of Rule 52(b) which, in pertinent parts, reads as follows:

"A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues."

The Carrier argued that the basis of this claim stemmed from a separate and definitive action, i.e., the establishment of the six and/or seven-day positions which occurred on the single date of September 7, 1998. Therefore, the Carrier insists that the claim as presented on June 20, 1999, was untimely filed under the clear provisions of Rule 52(a) which, in pertinent part, reads as follows:

"Rule 52 - TIME LIMITS

- (a) 1. All claims or grievances must be presented in writing by or on behalf of the employee involved to the officer of the Carrier authorized to receive same, within 60 days from date of the occurrence on which the claim or grievance is based."

From our review of the case file, the Board is compelled to hold that the initial claim as submitted by the Organization on June 20, 1999, was untimely filed. The single event that is the basis of this claim occurred on September 7, 1998. It is not a continuing claim as alleged by the Organization. The Board has repeatedly held that while a claim may indeed have continuing liability flowing from the a specific event, there cannot be a continuing claim when such claim is based on a specific act that occurred only once. Support for this principle is found in Third Division Awards 31043, 28826, 25538, 23953, 21376, 20655, 20631, 14450, 12984, 11167 among others.

Therefore, the Board has no recourse but to dismiss the instant claim without reaching the merits, or lack thereof, of the issues involved in the dispute.

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 21st day of July 2004.