

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37438
Docket No. SG-37936
05-3-03-3-358

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)

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 G. U. Wilson, for 8 hours at his overtime rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rule 16 when on June 22, 2002, a maintenance foreman was used on the Claimant's territory to assist a signal technician from 6:00 a.m. to 2:00 p.m., while the Claimant was on duty and available to work with the technician. Carrier's File No. 1326760. General Chairman's File No. S-16-305. BRS File Case No. 12640-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.

This dispute had its origin in a penalty claim submitted by the Organization on behalf of the Claimant in which it was alleged that on the claim date a Maintenance Signal Foreman assisted a Signal Technician in the performance of Signalman's work within the Claimant's assigned territory. The claim asserted that the Claimant "... was on duty and available to work with the Signal Technician." The claim alleged that the Claimant was entitled to eight hours at the overtime rate because of the utilization of the Foreman. The Organization alleged that this use of the Foreman violated the terms and conditions of Rule 16 of the Agreement.

Rule 16 - SUBJECT TO CALL reads as follows:

"A. Employees assigned to regular maintenance duties recognize the possibility of emergencies in the operation of the railroad, and will notify the person designated by the Management of their regular point of call. When such employees desire to leave such point of call for a period of time in excess of two (2) hours, they will notify the person designated by the management that they will be absent, about when they will return, and when possible, where they may be found. Unless registered absent, the regular assignee will be called, except when unavailable due to rest requirements under the Hours of Service Act, as amended by Public Law 94-348.

It is agreed that under the provisions of this rule the Management may, on thirty (30) days written notice to the employees involved and the General Chairman, schedule alternate interlocking repairmen and signal maintainers on one or more of the districts to remain on call on rest days, which will include all time from the end of the work period on Friday to the beginning of the work period on Monday. Such employees designated in the schedule to be available for call will keep the train dispatcher or the person designated by the Management informed as to where they can be called, and will respond promptly when called. Employees will be paid eight

(8) hours pro rata rate on the rest days on which they are designated in the schedule to be available for call; and if called to perform service on such days, will be paid in addition in accordance with Rule 13. Employees not scheduled to be available for call will be relieved on rest days except where emergency conditions necessitate their being available, in which event they will be notified prior to the end of the work period of the preceding day and paid in the same manner as employees scheduled to be available.

The schedule designating positions, incumbents of which will be required to be available for call on rest days, will be prepared for a six (6) months or longer period by the General Chairman and the designated Carrier Officer or their designee.

- B. The allowance provided in Section A of this rule is not applicable to employees called or notified in advance to work on rest days, or who are given the option of working on rest days.
- C. Regularly assigned signalmen required to be available for call on rest days while temporarily relieving signal maintainers or interlocking repairmen who are scheduled to be available for call on such days, in accordance with Section A of this rule, will be allowed minimum of eight (8) hours' compensation at rate of time and one-half.

Unassigned signalmen or assistant signalmen required to be available for call on rest days while temporarily relieving signal maintainers or interlocking repairmen who are scheduled to be available for call on such days in accordance with the provisions of Section A of this rule will be allowed eight (8) hours' compensation at pro rata rate.

No compensation will be allowed employees relieving signal maintainers or interlocking repairmen on rest days unless

required to work or be available for call in accordance with the provisions of Section A of this rule.

Existing provisions that punitive rates will be paid for Sunday as such are eliminated. The elimination of such provisions does not contemplate the reinstatement of work on Sunday which can be dispensed with. On the other hand, a rigid adherence to the precise pattern that was in effect immediately prior to September 1, 1949, with regard to the amount of Sunday work that may be necessary is not required. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change.

NOTE 1: 'Emergency' as referred to herein has reference to a present existing situation and not to anticipated future trouble.

NOTE 2: The Local Chairmen and Local Management may agree to establish lists or other means in which to determine which employees are to be called under this rule, subject to review by the General Chairman and Labor Relations."

It is clear from the case record that the Claimant was not on duty on the claim date but rather was off duty observing one of his assigned rest days. The record is also clear that the work performed by the Foreman and Technician on the claim date was part of an on-going project and was performed on a regular work day of their assignment at the straight time rate of pay.

There is no evidence in the record to show that there was any emergency service performed on the claim date. There is no evidence in the record to show that there was any planned overtime work performed on the claim date which could

have triggered an application of the provisions of Rule 16. There is no evidence in the record to disprove that the work performed by the Foreman and Technician was anything other than a part of an on-going project. There is no evidence in the record to disprove that the work performed by the Foreman and Technician was anything other than the normal straight time duties of their assigned positions.

There is no evidence in the record to support the contention that the Claimant was aggrieved in any way. The claim as presented is therefore denied.

AWARD

Claim denied.

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 March, 2005.