Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37567
Docket No. SG-37865
05-3-03-3-248

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(CSX Transportation, Inc. (former Chesapeake and
(Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation, Inc. (CSXT):

Claim on behalf of R. M. Smith Jr., for 3 hours at the straight rate, and 2.5 hours at the time and one-half rate, account Carrier violated the current Signalmen's Agreement, particularly Addendum 2 (Vacation) when it required the Claimant to work more than 25 percent of a vacationing maintainer's work load on March 20, 2002. Claimant worked from 12:30 PM to 6:00 PM. Carrier's File No. 15-02-0111. General Chairman's File No. 02-41-CD. BRS File Case No. 12626-C&O(CD)."

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 instant case is specific to a two day vacation granted by the Carrier to Signal Maintainer T. R. Breeden. The Organization alleged that while Breeden was on vacation, Claimant R. M. Smith, Jr. was ordered to work on Signalman Breeden's territory. Because the Claimant worked on March 20, 2002 from 12:30 P.M. to 6:00 P.M., a total of five and one-half hours, or more than 25 percent of the vacationing Signal Maintainer's work load, Article 10(b) was violated. It requests three hours at the straight time rate and two and one-half hours at the time and one-half rate.

As a threshold matter, the Carrier raised a time limit exception to the claim arguing in its Ex Parte Submission to the Board that although the Carrier denied the claim on September 5, 2002 the Organization failed to pursue the claim within the nine month mandatory time limit required. As such, it is barred from consideration.

The Carrier's procedural issue has been studied and is rejected. The Carrier's argument is that the Organization's Notice of Intent was dated June 4, 2003, but stamped as received by the Board on June 6, 2003. Because the time limit expired on June 5, 2003, the Carrier argued that the Notice of Intent was one day late. However, pursuant to the Board's Uniform Rules of Procedure, the postmark date on the envelope governs, and not the date stamp marked by the Board. In this instance, the envelope bearing the Notice of Intent was postmarked June 4, 2003 and as such, the Carrier's time limit argument is without merit.

On the merits, the Carrier argued several points on the property. It maintained that "Article 10(b) of the National Vacation Agreement does not contemplate vacation periods of less than 5 consecutive days in duration." The Carrier further noted that there is no proof that the work performed was exclusively reserved to the vacationing employee, that it burdened the Claimant, and was factually shown to be work actually performed during the five and one-half hours. It argued that without the appropriate evidence to demonstrate that the Claimant performed work belonging to the vacationing employee, the claim must fail.

The Board took the time to carefully study the 1941 National Vacation Agreement. Whatever may have been contemplated or assumed when it was

negotiated, the language carries through time. The Board finds no language whatsoever to support the Carrier's position that the Agreement "only applies for a full week's vacation, and not just for one day's vacation." The language refers to "vacation periods" and here that is clearly less than a full week. Because the vacationing employee was off on March 20 and 21, 2002, four hours is 25 percent. Here the Organization argues that the Claimant worked more than 25 percent in violation of Article 10(b). The Board holds that the two-day vacation is covered by the National Vacation Agreement, because it was a vacation period granted by the Carrier.

As for the specifics of the claim, there is sufficient evidence that the Claimant discussed the issue with Regional Engineer Train Control T. D. Ison prior to being sent to clear signal trouble at Powhattan Parkway and Pembroke on Signal Maintainer Breeden's territory while he was on vacation. The record persuades the Board that the work belonged to the vacationing Signal Maintainer's job and was not a part of the Claimant's regular duties.

Accordingly, the claim must be sustained. The Carrier distributed more than 25 percent of the vacationing employee's work to the Claimant without agreement with the Organization. It was a violation of Article 10(b). The Carrier's argument about demonstrating that the work was a burden is rejected, because the work was assigned in violation of Article 10(b) and as such, we will uphold the claim (Third Division Award 31250).

However, there is no Rule support for awarding the time and one-half rate. Accordingly, the Board will sustain the claim for five and one-half hours at the straight time rate of pay.

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 2005.