

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37871
Docket No. SG-37216
06-3-02-3-149

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
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe (BNSF):

Claim on behalf of A. D. Humphries for eight hours at the straight time rate of pay for each Thursday and Friday that the Claimant was not allowed to work and eight hours at the half-time rate of pay for each Saturday and Sunday that the Claimant was required to work, continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rules 2 and 3, when on January 9, 2000, it abolished two five-day maintainer positions with rest days on Saturday and Sunday at Alliance, Texas, and re-bulletined the position as a Relief Signal Maintainer with rest days on Thursday and Friday. Carrier's File No. 35 01 0017. General Chairman's File No. 01-034-BNSF-121-T. BRS File Case No. 11928-BNSF.”

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 Organization alleged in this claim that the Carrier violated Rules 2 and 3 of the Agreement when abolishing two five-day Signal Maintainer positions with rest days of Saturday and Sunday and deviating from the workweek, without reason; unilaterally creating Relief Signal Maintainer positions, which have no classification under the Agreement. The Organization argues that the Carrier violated the Agreement by abolishing two Monday through Friday workweek positions with Saturday and Sunday rest days and creating positions with rest days of Thursday and Friday. The Organization points to Rule 2, Classification, as violated by the creation of Relief Signal Maintainer and Rule 3(B) and (F) as violated by deviating from a Monday - Friday workweek without any operational need or Organization concurrence.

The Carrier argued that the positions were unable to facilitate the increased work of the Alliance Yard Complex. Although it ran the yard with the two Monday through Friday positions for a number of years, it could no longer do so. As for a violation of Rule 2, Classification, the bulletin listing a Relief Signal Maintainer position complies with Rule 3(E) "Regular Relief Assignments" and therefore is not a violation. As for Rule 3 (B) and (F), they were not violated due to operational necessities, and were clearly covered by Rule 3(D) and (E). As such, the Carrier fully complied with the Agreement.

The Board studied the record and its background. There is no dispute that Alliance Yard is a 24-hour, seven day a week operation. Although the facility began in 1994 with two Signal Maintainer positions working five day service, the Carrier specifically noted on the property that serious economic competition required changes, making it "critical that signal personnel are immediately available at the Alliance Complex to facilitate repairs to optimize yard operations." There is no Organization challenge to this Carrier position. The Organization argued instead that the five day positions should be maintained, because of Rule violations.

Rule 2 is a Classification of Work Rule. The Board studied it and does not agree with the Carrier's use of terminology or explanation. In fact, the Carrier agrees with the Organization, when it states, "The purpose for stating "Relief" prior to "Signal Maintainer" on the bulletin is for clarification and certainly does not indicate that the Carrier created a new classification." It is not necessary to call the employee a "Relief Signal Maintainer" as this is redundant, not in the Agreement, and is his assignment, not his classification; but nevertheless, this does not rise to the level of an Agreement violation sustaining this claim.

Rule 3 is the core of the dispute. The Board studied Rule 3 and the numerous Awards cited for support. Rule 3(A) grounds the Rule in the March 19, 1949, 40-Hour Work Week National Agreement, which includes the right of the Carrier to change from five days service to seven days service when operations necessitate the change. Rule 3(B) is for a five-day position with Saturday and Sunday off, "on positions the duties of which can reasonably be met in five days." Rule 3(F), which the Organization cites as violated permits the Carrier when it cannot reasonably perform the work under Rule 3(B) to make the change, even when the "parties fail to agree," with the additional right of processing a grievance.

The Carrier relies upon Rule 3(D) and (E). The Rules it maintains support the change are stated as:

- "D. Seven-day positions. On positions which have been filled seven days per week any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.
- E. Regular Relief Assignments. All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof, or to perform relief work on certain days as may be assigned under this agreement.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district,

provided they take the starting time, duties and work locations of the employee or employees whom they are relieving.”

The Organization provided no probative evidence to support the Carrier’s violation of Rule 3. The Board finds that the Carrier provided justification for its change at Alliance Yard from two employees both working Monday through Friday, to having employees available on Saturdays and Sundays. It is the Organization that has the burden to establish a Rule violation and it has not done so. The Carrier has the right under Rules 3(D) and (E), supra, to meet its stated operational requirements and expand its coverage to seven days under this Agreement, as “the workweeks may be staggered in accordance with the Carrier’s occupational requirements” and only Saturday and Sunday days off are provided “so far as practicable.” The Organization provided no evidence in this record to support the practicality of operating Alliance Yard with two five day positions which are not staggered. Certainly, the Carrier is not required to pay regular overtime, rather than utilize the rights of the negotiated Agreement.

As such, the Board cannot find an Agreement violation by the Carrier. While the assignment of employees designated as “Relief Signal Maintainers” is not in the Agreement and unnecessarily redundant with Rule 3(E), the Board is forced to conclude that the claim must be denied for the reasons stated above.

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 1st day of August 2006.