

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40480
Docket No. SG-40192
10-3-NRAB-00003-070431
(07-3-431)

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 Railroad:

Claim on behalf of C. L. Caballero, D. W. Dugger, R. E. Holmes, Jr., R. D. Jones and G. N. Troesser, for 17 hours each at their respective half-time rates of [pay] for working off of their zone and for working on their assigned rest days, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5(j) and 36, when it required the Claimants to work off of their assigned Zone on June 12, 13 and 14, 2006 and failed to compensate them for their work off-territory and their rest days at the time and one-half rate of pay. Carrier’s File No. 1453534. General Chairman’s File No. S-5(J), 36-774. BRS File Case No. 13756-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.

At the time this dispute arose, the Claimants were assigned to Zone Signal Gang 2166 assigned to Zone 4. They were assigned to a regular work schedule of eight days on and six days off. The Carrier assigned the Claimants to work in Iowa, which is located in Zone 5, outside of their regularly assigned zone. The Claimants were scheduled to begin their work on June 12 – a rest day – prior to what would have been their regularly assigned start date of June 13, 2006. The Claimants performed four hours of overtime service on June 13 and three hours of overtime service on June 14. The Carrier paid the Claimants at the time and one-half rate for working in Iowa from June 12 - 14.

The Organization filed a claim on June 27, 2006 asserting that the Carrier had violated Rules 5 (j) and 36, which read, in pertinent part, as follows:

“5(j) . . . Overtime will be computed on the basis of pay at the time and one-half rate after ten (10) hours per day. Any service performed on the accumulated rest days will be paid at time and one-half rate except in those instances where double time pay would be appropriate after sixteen (16) hours.

36 . . . If a zone gang is performing work off of its zone, the employees of that gang will receive one and one-half time pay, up until the employees of the gang qualify for double-time, at which time they will be paid at the double-time rate.”

The Organization maintained that because the Claimants were off their assigned territory and worked overtime, they should receive half time pay for the overtime and half time pay for being off of their assigned territory. It insisted that Rule 36 did not require that the Claimants give up their overtime pay on their accumulated rest days when they were required to work off of their assigned territory. Thus, the Organization contended, the Claimants should have received the time and one-half rate of pay for their overtime, and the half time rate of pay for being off of their assigned territory; that is, each Claimant should receive an

additional half time pay at their respective rate of pay for all hours worked on their rest days and overtime.

The Carrier denied the claim by letter of August 16, 2006. In that letter, the Carrier contended that it has never paid employees in the manner proposed by the Organization. In support of its position, the Carrier cited Rule 13 of the Agreement which states: "There will be no overtime on overtime. . . ."

The Organization appealed the Carrier's denial on August 24, 2006. It stated that the claim was not for overtime on overtime as covered by Rule 13. Rather, it maintained that under Rule 36 the half-time payment sought was a punitive payment for being off of their assigned territory, and not for overtime. Thus, the Organization insisted, the payment is for the Claimants' being off of their assigned territory and is not related to overtime pay for working additional hours on their accumulated rest days. After the Carrier again denied the claim by letter of October 24, 2006, it was subsequently progressed according to the Parties' Agreement, including conference on the property on January 9, 2007.

In reviewing the pertinent language in the Agreement, the Board notes that neither Rule 5(j) nor Rule 36 specifically addresses the situation at issue in this claim. Rule 36 clearly provides that a zone gang performing work off of its zone – for example during its regular workweek – will be compensated at the rate of time and one-half until they qualify for double time. Rule 5 (j) addresses pay for all employees and states that overtime shall be computed on the basis of pay at time and one-half after ten hours of work (on a normal work day) or for any work performed on a rest day. Rule 5(j) also stipulates that double time pay becomes appropriate when an employee working on his rest day has worked beyond 16 hours in a day.

The Claimants in this case were working off zone and working on one of their rest days. To suggest that they are covered only by the provisions of Rule 5 (j) in that circumstance nullifies the purpose of Rule 36, which serves to compensate employees assigned to work off of their zone. There is no dispute in this record that during their regular work hours off zone, the Claimants were properly compensated at the rate of time and one-half. At issue is whether, when they worked on their rest day and the seven hours of overtime on June 13 and 14, they were entitled to the half time off-zone pay plus time and one-half. If the provisions of Rule 36 are to

have meaning, then the half time off-zone pay cannot be suspended when the Claimants are working on a rest day or working overtime. This is not a matter of "overtime on overtime." Rather it is a matter of acknowledging that there is a cost to the Carrier of removing a gang from its zone and that cost does not evaporate when the gang is required to work on a rest day or to work overtime. (See also, Third Division Award 37630 and Public Law Board No. 4716, Award 119).

AWARD

Claim sustained.

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 14th day of May 2010.