Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 40523
Docket No. SG-39444
10-3-NRAB-00003-060095
(06-3-95)

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
(
(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 M. A. Forgues, for reimbursement for two hours of vacation pay for each day for March 26 and 27, 2005, account Carrier violated the current Signalmen's Agreement, particularly Rules 5, 25 and Appendix B, when it required the Claimant to use 10 hours of vacation for each day instead of eight hours for the two days of vacation. Carrier's File No. 1421872. General Chairman's File No. UPGCW-5-1109. BRS File Case No. 13499-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.

The Carrier raised a jurisdictional issue involving the Statement of Claim before the Board. The Board studied the Carrier's arguments and finds that the claim at bar is not materially different than that alleged in the claim submitted on the property on March 30, 2005 and is reflective of the established record. It will not be dismissed, but handled on its merits.

The issue at bar is over undisputed facts. The Organization submitted a claim alleging that the Claimant was assigned to work on a gang with a compressed workweek. The Claimant worked eight days on a ten-hour per work day schedule, followed by six days of continuous rest. The Claimant had earned ten days of vacation. The issue at bar had to do with the vacation days of March 26 and 27, 2005. The Claimant was notified that he was required to take ten hours of vacation for each of those two days he was on vacation.

The Organization argues that this is a clear violation of Rules 5, 25 and Appendix B of the Agreement. The Claimant's rights were violated when he was not permitted to accrue pay for vacation in the same manner as those who worked five, eight-hour days. Rule 5(j)2 clearly states:

> "Employees will qualify for holiday pay by complying with existing holiday rules. Employees on vacation will qualify for holiday pay under existing agreement rules. Employees working shortened work weeks under this section (Accumulation of Rest Days) will accrue vacation credits and be awarded same as though working on a five (5) day forty (40) hour work week." (Emphasis added)

The Organization provided evidence by way of two letters of discussion agreement with two different Carrier Officers that supported a practice, and further indicated that employees "could use a ten (10) hour day, as a day's vacation. . . ." The Organization maintains that the Claimant is entitled to ten hours' pay for each day of vacation, not eight hours. The Organization argues that although the Claimant worked a ten-hour day, he was entitled to take an eight-hour vacation day, as per the Rule, supra. The Organization maintains that the employee

is granted a set number of vacation days each year under the National Vacation Agreement, which would remain unchanged, although the employee would forfeit two hours of pay. The Claimant has the right to take an eight-hour vacation day, which the Carrier violated.

The Carrier agrees that the National Vacation Agreement governs qualifications for vacations, as amended in Appendix B, but disagrees on every other argument raised by the Organization. The Carrier contends that the proper Rule governing this dispute is Rule 36, which was negotiated subsequent to Appendix B. Rule 36 (Traveling Gang Work) is the Rule that applies to the gang that the Claimant works on and that Rule states, in pertinent part, that:

> ". . . employees on zone gangs will work a schedule of either eight (8) days on and six (6) days off or twelve (12) days on and nine (9) days off. It is the intent of the parties to work employees on an eight (8) days on/six (6) [days] off schedule when possible given the requirements of the Carrier."

Here the Carrier worked the zone gang eight, ten-hour days with six consecutive days off. This Rule, supra, governed the work hours of this job. This was permitted by Rule 5(j) and at Section 5(j)(2) "Employees working shortened work weeks under this section . . . will accrue vacation credits and be awarded same as though working on a five (5) day forty (40) hour work week." To this end, the Carrier permitted employees working four days at ten hours per day to accumulate vacation at the rate of 1.25 days per work day.

The Carrier argues that there was no Rule support, logic to the argument or in fact, any agreement to provide vacation days or pay in the manner disputed. It denies any practice in effect permitting an eight-hour vacation day or ten hours with pay as in this claim. The Carrier asserts it acted properly.

It is well-established that the burden of proof in this type of claim rests with the Organization. The evidentiary support for the claim rests with the letters of April 4, 2002, and February 9, 2004, alleging that this was the result of discussion with two Labor Relations Officers who had authority to interpret the Agreement.

The Board not only notes the Carrier's rejection of the letters, but also that both letters are singularly written by the General Chairman, without proof of concurrence by the Carrier. In fact, the Carrier argued that they were never agreed to between the parties. No factual basis supports the Organization's position in this record documenting a Carrier practice, acquiescence, or agreement with the contention of an eight-hour vacation day under these facts.

The Board carefully studied the full record with the following conclusion. There is no support for the Organization's position. The Organization, as the moving party, presented a lack of substantial evidence to demonstrate a practice on the property or Rule to support its position. Further, under the Agreement and Rules contested, there is no showing that the Carrier's determination of vacation credits for a compressed four day ten-hour workweek and wages paid for vacation worked as ten hours was improper. The Organization must do more than assert a violation. After refutation by the Carrier, it must provide evidentiary support to prove it. There is no Rule or practice shown to entitle an employee on a compressed workweek of a ten-hour assignment to obtain an eight-hour vacation day. The Organization failed to prove otherwise and, as such, the claim must be 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 15th day of June 2010.