

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40524
Docket No. SG-39445
10-3-NRAB-00003-060096
(06-3-96)

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 R. L. Klepper, for reimbursement for two hours of vacation pay for each day for January 2, 3 and 4, 2005, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 25 and Appendix B, when it required the Claimant to use ten hours of vacation for each day instead of eight hours for the three days of vacation. Carrier’s File No. 1419305. General Chairman’s File No. UPGCW-5-1093. BRS File Case No. 13513-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 Board studied this dispute carefully. Because we find that there are no materially different issues or evidence submitted herein by the Organization to support its position, our decision in Third Division Award 40523 is incorporated herein by reference. In this instance, the Organization by letter dated February 23, 2005 alleged that on three dates in January, 2005 the Manger of Signal Construction instructed Claimant's Signal Gang Foreman that the Claimant had to utilize ten (10) hours of vacation for each of the three days.

The Board carefully read the on-property record. The Organization argues that Director of Labor Relations M. D. Phillips by letter of April 4, 2002, and General Director Labor Relations W. Naro, by letter dated February 9, 2004, agreed that the proper interpretation of the Agreement for those with compressed work schedules would be based on days, not hours, with a day being eight hours. The Organization maintains that there is nothing in the National Vacation Agreement on vacations paid for in hours, however Rule 5(j)2 states that "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." Accordingly, it asserts that the Claimant was entitled to take an eight-hour vacation day; not ten hours as the Carrier required.

The Board fully considered all of these issues and reached the following conclusion. The Organization has the burden of proof. In this case, there is no Rule on point. The Carrier has shown on the property how vacation days and spent vacation credits are utilized. There is no proof that it is not hours and on a compressed schedule applied as indicated in the record. There is no Rule providing compensation as alleged in the claim; and discussed on the property for personal leave, jury duty and bereavement leave.

The fact is that the Organization failed to meet its burden of proof. The April 4, 2002 and February 9, 2004 letters were not signed by the Carrier. Nor were they accepted by the Carrier as extensions of the Agreement; nor are they on point. Rule 5 does provide a workweek as five days of eight hours each day, not ten, but it does not prove applicability to a compressed workweek. The Board has not been shown

proof of the applicability of Rule 5, Rule 5(j)2, or any Rule restricting the Carrier's use of credits for a ten-hour work day. Nor is there any practice, Rule or proof that once an employee is qualified for days earned that they must utilize vacation days by an eight hour day. In fact, we find no evidence that the Carrier ever permitted an employee a choice of an eight-hour or ten-hour day on a compressed workweek assignment.

After full consideration of the instant claim and the evidence of record, the Board finds that the Organization has not met its burden of proof. Accordingly, the claim is 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.