

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40575
Docket No. SG-39674
10-3-NRAB-00003-060171

The Third Division consisted of the regular members and in addition Referee James E. Conway 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 J. D. Highfill, for 6 hours and 30 minutes at his time and one-half rate of pay for standby coverage on January 4 and 5, 2005, and 11 hours at his time and one-half rate of pay for standby coverage on January 5 and 6, 2005, account Carrier violated the current Signalmen’s Agreement, particularly Rule 15(B), when it instructed the Claimant to go home so that he could be available for standby coverage due to an ice storm and failed to compensate the Claimant for his standby service. Carrier’s File No. 1420025. General Chairman’s File No. S-15 (B) – 676. BRS File Case No. 13512-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.

This case centers on the question of whether the Claimant was properly placed in stand-by status or improperly sent home to rest merely to avoid running afoul of the Hours of Service Act mandating that signal employees cannot work more than 12 hours within a 24-hour period.

On January 4, 2005, the Claimant was assigned to the 7:00 A.M. shift which was scheduled to conclude at 3:30 P.M. At 12:00 P.M., however, the Claimant's Manger instructed him to go home early in anticipation of possibly needing his services later in the day due to an anticipated ice storm. The Carrier asserts that it did not place the Claimant in stand-by status, but instead released him at noon to secure his rest and remain eligible for recall consistent with the Hours of Service Act if the anticipated storm ensued. The Claimant was paid at the regular rate of pay for his entire shift on January 4, 2005. The Carrier then called the Claimant to work later on January 4 until 1:00 A.M. the next morning, for which he was compensated nine hours at the time and one-half rate.

On January 5, the Claimant began his normal shift at 7:00 A.M. At 1:30 P.M., however, the Claimant's Manger once again directed him to go home early in anticipation of needing him to work later due to the storm. The Claimant was paid at the regular rate of pay for his entire shift on January 5, 2005. The Carrier called the Claimant into work later on January 5 and he worked from 6:30 P.M. until 11:00 P.M. and was compensated at the time and one-half rate for four and one-half hours.

The Organization filed a claim on February 20, 2005 requesting that Claimant be compensated for stand-by service during the period of January 4 through January 7, 2005. It contends that the Claimant was placed on stand-by coverage after his assigned hours at 3:30 P.M. on both January 4 and 5 until 7:00 A.M. on January 5 and 6, and thus is entitled to pay for an additional 17.5 hours of stand-by coverage at the time and one-half rate of pay. In sum, it requests an additional 11 hours for stand-by service for January 4 and an additional 6.5 hours for stand-by

service for January 5. The Organization argues that the Carrier's failure to compensate the Claimant as requested is a violation of Rule 15(B) which reads, in relevant part, as follows:

"Rule 15 – CALLS

- B. The time of employees so notified in advance will begin at the time required to report. The time of an employee called will begin at the time called. The time of an employee notified or called will end at the time released at designated headquarters point."**

The Organization notes that the Carrier compensated another signal employee who had been placed on stand-by service on the same dates and not called to perform work after his assigned hours on those days. Because the Carrier instructed the Claimant to go home to rest to be available between 3:30 P.M. and 7:00 A.M., he was also providing stand-by service, because he was under the direction and control of the Carrier. If the Claimant had gone home and marked off the whole night, the Claimant would not have been available for service, and plainly the Carrier sent the employee home during normal work hours with pay in exchange for the expectation of his availability of service.

The Carrier denied the appeal in a letter dated July 8, 2005, reiterating its previous position that the Claimant was not requested to come into work to perform compensated service and asserting that he was sent home early from his assigned tour of duty to ensure adequate rest under the Hours of Service Act should he be required to perform emergency call outs on his assigned territory under the provisions of Rule 16.

The Board concludes the Organization failed to demonstrate that the Claimant was required to perform any function for the Carrier's benefit during the off-duty hours claimed. It is clear from this record that the Carrier did not instruct the Claimant to stand-by at home, nor did it provide any instructions as to what he should do once he returned home. While it was the Carrier's hope that the Claimant would rest, he was plainly at liberty to do whatever he chose to do, and thus was not on stand-by status, because he was not under the control and direction

of the Carrier. The Organization failed to meet its burden of establishing a violation of Rule 15. The Claimant was paid from the times he was required to report, never was on stand-by and never performed service for the Carrier outside of his normal work hours. He was properly compensated for work performed.

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 27th day of August 2010.