

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40902
Docket No. SG-41011
11-3-NRAB-00003-090369**

The Third Division consisted of the regular members and in addition Referee Lisa Salkovitz Kohn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of C. Cross, for 8 hours pay at the straight time rate for the violation that occurred on February 9, 2008, account Carrier violated the current Signalman’s Agreement, particularly Rules 51, 74, Supplement No. 2 and letter dated April 15, 1994, involving Supplement No. 2, when it failed to compensate the Claimant the sixth day pay associated with the monthly rate on his assigned sixth day. Additionally, Carrier failed to advise Claimant of a shortage of pay or give reasons as required by Rule 74. Carrier’s File No. 11-37-664. General Chairman’s File No. 115-ME-08. BRS File Case No. 14258-NIRC.”

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 all times relevant to this dispute, the Claimant was assigned as Vacation Relief Signal Maintainer, with assigned hours of 7:00 A.M. until 3:00 P.M., Monday through Friday, with sixth day Saturday and rest day Sunday. On February 4–6, 2008, the Claimant relieved the second shift South Chicago Branch Signal Maintainer, who has an assigned tour of duty from 2:00 P.M. until 10:00 P.M., with Saturday, Sunday, and holidays as regular days off. On Thursday, February 7, 2008, he was not assigned to relieve anyone. He rested during his regular hours from 7:00 A.M. to 12:00 P.M. and worked with the Kensington Signal Maintainers performing snow duty from 12:00 P.M. to 8:00 P.M., the last five hours of that work having been performed on an overtime basis. On Friday, February 8, 2008, the Claimant performed service on his regularly scheduled position; he did not perform a relief assignment that day. On Saturday, February 9, 2008, the Claimant was assigned to relieve the second shift Kensington Signal Maintainer. The assigned days of that position are Wednesday through Sunday, with a sixth day on Monday and rest day on Tuesday.

The Organization claims that the Carrier violated Rules 51, Supplement No. 2, and the Side Letter to Supplement No. 2 dated April 15, 1994, because on Saturday, February 9, 2008, the Claimant did not receive “the guaranteed sixth day pay on his assigned sixth day,” and violated Rule 74 by failing to give a reason why the claim for compensation was denied. The Carrier submits that the Claimant was properly compensated under the Side Letter to Supplement No. 2 because February 9, 2008, was a regularly scheduled workday, not the sixth day, for the second shift Kensington Signal Maintainer position that he was relieving that day. Rule 74 was not violated, the Carrier asserts, because the Claimant was told at the time he submitted his work reports that he was not entitled to additional compensation for the date claimed, and knew of the denial by the time his claim was filed on February 29, 2008, and in any case, there is no penalty specified for a violation of Rule 74.

In Third Division Awards 40897, 40898, 40899 and 40900 the Board addressed many of the contentions raised here. As discussed in those Awards, we have concluded that under Supplement No. 2 and the Side Letter dated April 15, 1994, the Vacation Relief employee assumes the assigned work days, sixth day and rest day of the position that he is relieving, but cannot be required to work more than eight consecutive days at the straight time rate of pay. We also concluded that nothing in either Supplement No. 2 or the Side Letter dated April 15, 1994, grants a Vacation Relief Maintainer more than the Signal Maintainer's monthly rate during the assigned hours of the relieved position, with only one exception: If a Vacation Relief employee works more than eight consecutive days at the straight time rate, then the employee is entitled to a half-time penalty in addition to receiving compensation based on the monthly rate. Other than that situation, the Vacation Relief employee is entitled to no more than the Signal Maintainer's monthly rate of pay for all hours worked, either on his regular assignment, or when relieving a vacationing employee, or when performing other relief assignments or signal work, as permitted by Supplement No. 2. In particular, the parties' Side Letter dated April 15, 1994, which permits the Carrier to assign a Vacation Relief Signal Maintainer to work up to eight consecutive days at the straight time rate, makes it clear that the provision in Rule 51 prohibiting monthly rated employees from performing "ordinary maintenance or construction" on the sixth day of the workweek or on recognized holidays does not apply to the relief work performed by Vacation Relief Signal Maintainers. Because the Claimant was not worked more than eight consecutive days on assignments permitted under Supplement No. 2 and the Side Letter, the employee is not entitled to compensation beyond his straight time rate.

In this case, the Organization asserts that the Claimant was subject either to his bulletined work days and hours, or to the work days of the second shift South Chicago Branch Signal Maintainer, both of which had Saturday, February 9 as a sixth day. However, Supplement No. 2 is very clear that the Vacation Relief employee takes the assigned work days, sixth day and rest day of the position that he is relieving — in this case, the second shift Kensington Signal Maintainer position. The sixth day for that position was Monday; Saturday was a regular work day. The Organization failed to carry its burden to prove otherwise. Because the Claimant did not work more than eight consecutive days at the straight time rate of pay, no additional compensation was due for February 9, 2008.

Rule 74 states:

“SHORTAGE IN PAY: When an employee’s pay is short one day or more, a check will be issued to cover, if requested. Employees will be advised as promptly as possible when claim for compensation is not allowed and reasons therefor.”

The Organization asserts that the Claimant was never told why his claim for sixth-day pay was being denied, or even that it was being denied. The Carrier counters that there was no violation because the Claimant was told when he turned in his work report that the compensation would not be paid, including a signed notation on the report “standby denied.” It is unnecessary for the Board to resolve this factual dispute. Even if the Claimant did not receive notice when he turned in his work report, he clearly had been made aware of the denial at the time he received his paycheck on February 28, because he filed a detailed claim on February 29, 2008. The Organization therefore failed to satisfy its burden of proving that a violation occurred. More important, Rule 74 does not create a separate monetary penalty. If an employee believes he has been short-changed there is a separate procedure for making a claim for missing pay. Accordingly, the claim is denied in its entirety.

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 10th day of March 2011.