

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40938
Docket No. MW-41022
11-3-NRAB-00003-090354

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
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(Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow System Gang 8562 employee A. Kelley the ‘deferred starting time’, as required by Rule 30, in connection with his assigned gang’s move of assembly point from The Dalles, Oregon to Dehli, California (System File C-0830U-160/1499342).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Kelley shall now be compensated for the twelve (12) hours at his respective overtime rate of pay.”

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 issue presented by this claim is whether the Claimant is entitled to be paid for the deferred starting time under Rule 30(a) as a result of the move of the assembly point of his assigned on-line system gang 665 miles at a time when he was on vacation. It raises the question of whether the last day worked prior to the period of observance of vacation and holidays and the first day back to work after such period meets the definition of "consecutive workdays" found in the relevant provisions of the Agreement set forth below:

"RULE 30 - DESIGNATED ASSEMBLY POINT

(a) . . . The assembly point for employees headquartered on-line will be the designated work site where the day's work is scheduled to begin. If the assembly point for on-line employees is changed from one workday to another, the Carrier must designate the new assembly point no later than the close of shift on the previous workday. Unless so designated, the assembly point will remain unchanged. If the employees are prevented from assembling at the work site to begin their tour of duty because of inadequate roads or parking for their personal vehicles, arrangements for a suitable assembly point located nearest the work site will be made for the beginning of each employees' tour of duty.

For the purpose of insuring that the traveling on-line employees are afforded an opportunity to secure adequate rest, it is agreed that the distance traveled between a former assembly point and a new assembly point during any 24-hour period will not normally exceed four hundred fifty (450) miles. Likewise, traveling on-line employees will not normally be expected to travel in excess of one hundred fifty (150) miles in moving from the former assembly point to the new assembly point during the unassigned hours between two consecutive workdays.

APPENDIX X-2

Under the language of Rule 30 the parties placed certain mileage restrictions on the location of a newly designated assembly point. These restrictions are intended to be applied under normal day-to-day operations. The parties jointly well (sic) recognize, however, that on occasion the requirements of service may dictate the need to establish an assembly point at a location in excess of the mileage restrictions set

forth in Rule 30. The rule is not intended to prohibit such movement, but is primarily intended to insure that on-line employees are afforded an opportunity to secure adequate rest before being requested to again go on duty. When such long distance moves are made, any distances traveled in excess of the restrictions shall be discounted at the rate of sixty (60) miles per hour from the next scheduled workday beginning at the start of the shift. In computing time under this provision, any fraction of a half hour less than fifteen (15) minutes shall be dropped; in turn, any fraction of a half hour which is fifteen (15) minutes or more shall be counted as an additional one-half hour.”

The facts are not in dispute. The Claimant was assigned to on-line System Gang 8562 working compressed halves during the relevant period, with its assembly point in The Dalles, Oregon. He took scheduled vacation (including certain paid holidays) from November 27 to December 31, 2007. During this period of time, his gang moved its assembly point 665 miles to Dehli, California, and the gang members working were given deferred starting time on the second day of the move. The Claimant returned to work at the new assembly point on January 8, 2008, and the Carrier denied his request for compensation for the same deferred starting time as was given the rest of the gang members at the time of the move. This claim resulted.

The Organization argues that Rule 30(a) and Appendix X-2 contain no exceptions that permit the Carrier to deny an employee deferred starting time simply because the employee was observing authorized vacation when a gang move takes place, and that accepting the Carrier’s interpretation would alter the intent of the clear language of the Rule, which the Board must apply as written, citing Third Division Awards 1248, 18423, 20276, 20956 and 37464; Special Board of Adjustment No. 279, Award 445. It relies on the holding of Public Law Board No. 6244, Award 1 that “consecutive work days” in Rule 30(a) can include calendar days that are separated by contractually provided time off as applicable to this case. The Organization contends that the Claimant is entitled to the same deferred starting time afforded to all other members of his gang, or pay in lieu thereof, because he made the change of assembly point, just on a different day than the others. It asserts that the Carrier did not contest its requested remedy of payment of 12 hours at the overtime rate, which should be granted by the Board.

The Carrier contends that the Claimant is not entitled to a deferred start time because he did not make the move from one assembly point to another with the rest of

his gang because he was on an approved vacation he had requested months before. It notes that Rule 30(a) sets forth the purpose of deferred starting time - which is to insure adequate rest - and asserts that the Claimant had 42 days to rest between the times he performed service for the Carrier on November 26, 2007 and January 8, 2008. the Carrier argues that the holding in Public Law Board No. 6244, Award 1 deals with whether Friday and Monday are considered consecutive work days where Saturday and Sunday are the designated rest days, and does not address the issue where an employee takes vacation between such work days. It notes that a vacation day is considered a work day under the National Vacation Agreement definition, pointing to the holding in Public Law Board No. 6302, Award 14, and concludes that the Claimant did not work consecutive work days in this case. The Carrier argues that a vacation day has been determined to be a voluntary absence from a workday, negating the contractual requirement for deferred starting time, citing Third Division Awards 39135, 39136, 39277, 39504 and 39717. The Carrier also asserts that evidence of past practice on the property not to pay deferred starting time when an employee is on vacation at the time the gang moves has not been refuted on this record. Finally, the Carrier takes issue with the request for payment at the overtime rate as excessive.

A careful review of the record convinces the Board that the Organization failed to meet its burden of proving a violation of Rule 30(a) in the denial of deferred starting time to the Claimant in this case. Rule 30(a) and Appendix X-2 make clear that the purpose of deferred starting time is to insure the opportunity for adequate rest for on-line gangs moving assembly points prior to being requested to again go on duty. The Carrier's unrefuted practice on the property to grant deferred starting time only to gang members who actually make the move and are performing service both before and after the move is consistent with this purpose. As noted by the Carrier, the Claimant was not only not working at the time of his gang's move, but he had 42 days off between November 27, 2007 and January 8, 2008 when he reported to the new assembly point and requested deferred starting time. Additionally, prior on-property precedent establishes that vacation time is considered to be voluntary absence from a workday, and does not bridge the gap of consecutive work days for purposes of contractual benefits (such as rest day per diem). See, e.g. Third Division Awards 39277, 39504 and 39717; Public Law Board No. 6304, Award 14.

Public Law Board No. 6244, Award 1, relied upon by the Organization, does not provide otherwise. It deals with the interpretation of "consecutive workdays" under Rule 30(a) in the context of a Monday to Friday workweek with Saturday and Sunday rest days, finding that Friday and Monday are properly considered consecutive

workdays for purposes of deferred starting time occasioned by travel to a new assembly point over 450 miles away on a rest day, and in the absence of a showing of prior practice to the contrary. That Award does not deal with whether deferred starting time is owed to a gang member who was on vacation at the time of the move and whose workdays were separated by other than assigned rest days. Consistent with proven practice, the precedent on the property with respect to vacation days being considered "workdays" for which an employee is voluntarily absent, and the purpose of Rule 30(a) we conclude that the Claimant did not work on "consecutive workdays" within the meaning of Rule 30(a) and is not entitled to compensation for deferred starting time in this case.

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 24th day of March 2011.