Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41609
Docket No. SG-40022
13-3-NRAB-00003-070251

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
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(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. Bitoni, C. L. Cupp, D. L. Osborn and B. J. Walker, for 10 hours each at their respective half-time rates of pay for working on their assigned rest days, account Carrier violated the current Signalmen's Agreement, particularly Rules 5 and 80, when it required the Claimants to attend training classes on February 24, 2006 and failed to compensate them for their work on their accumulated rest day at the time and one-half rate of pay. Carrier compounded this violation by failing to respond to the appeal within the time limit provisions of Rule 69. Carrier's File No. 1446620. General Chairman's File No. UPGCW-5-1230. BRS File Case No. 13742-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 claim submitted by the Organization is for ten hours at half time rates of pay for employees who were allegedly not properly reimbursed. The Organization filed the claim on March 27, 2006 due to the fact that the Manager Signal Construction required the Claimants to attend a Crane Training Class for which they were only reimbursed at their straight time rate of pay for work performed in violation of Rules 5 and 80. The Organization disputed the Carrier's initial response that the attendance was "mutually beneficial" training and only involved eight hours for which they were properly compensated. The Organization further argued that under Rule 5, "Any service performed on the accumulated rest days will be paid at the time and one-half rate . . ." and pursuant to Rule 80, "An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss." The Organization further asserted that the Carrier had violated Rule 69 when it failed to timely respond to the claim within the 60-day time limit. Stated differently, the Organization argued that the claim (1) is fatally flawed procedurally (2) was not corrected prior to submission to the Third Division and (3) was clearly a violation of the Agreement.

The Carrier rejected all of the Organization's arguments. In its denial, the Carrier insisted that it had properly and timely submitted a response within the time limits prescribed in the Agreement. Further, it contended that the Claimants were required to attend a mandatory training class. Such training was required because they were on a gang boom truck and at some point might have occasion to operate the boom to perform their duties. Operation required them to hold a proper CDL license under state regulations and the class was necessary to prepare them to pass the state certification examination. It was clearly not "service" as contemplated by Rule 5 and was "mutually beneficial" as that term has been considered by many prior Awards. Accordingly, the Carrier asserts that there was no merit to the claim.

As a preliminary point, the case record closed on April 25, 2007 when the Organization filed its Notice of Intent with the Third Division. All material submitted thereafter is improper and was not considered. As for the procedural issue at bar, the Board carefully studied the record and notes that the Carrier denied any time limit violation. More importantly, the correspondence of January 15, 2007 supports the Carrier's position that the appeal letter of July 26, 2006 was properly sent on the 47th day, with an incorrect file number. The attached emails, as well as the Affidavit of

Manager, Labor Relations Jeyaram constitute persuasive evidence and cause the Board to find no procedural error and to consider merits.

On the merits, there is ample Award support to find that the Carrier's training class was "mutually beneficial" and did not constitute "work" or "service" as contemplated by the Agreement (Public Law Board No. 6459, Award 12; Third Division Award 36628). For the reasons provided in prior Awards, the Board concludes that the Carrier's position is correct, inasmuch as there is insufficient denial of the Carrier's explanation of the training. The Carrier stated that the Crane Class was held to prepare the Claimants to pass the state certification examinations by providing "instruction on site set-up, technical knowledge, controls, load charts and other important safety issues such as clearance near power lines." The Board finds no support for any adverse conclusion to overturn this similar Award support of mutually beneficial training. There are no facts that would lead the Board to conclude that the Claimants provided "service" or "work" consistent with the intent of the disputed language. Accordingly, finding no procedural error and a lack of support for the inference that "work" was performed by the required attendance at the Crane Training Class, 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 24th day of April 2013.

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41612
Docket No. SG-41260
13-3-NRAB-00003-100123

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
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(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 H. J. Hunt, for eight hours pay at the straight time rate for each Monday he is forced to observe as a rest day, and payment at the overtime rate for all hours he was required to work on Saturday, beginning on September 12, 2008, and continuing until resolved, account Carrier violated the current Signalmen's Agreement, particularly Rules 1, 5, 56, and 80, when it advertised a Relief Signal Maintainer position that by agreement are assigned work days of Monday through Friday, with rest days of Saturday and Sunday, to work days of Tuesday through Saturday with Sunday and Monday as rest days. Carrier's File No. 1512336. General Chairman's File No. N 5 777. BRS File Case No. 14281-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 dispute at bar is straight forward. The Carrier bulletined Gang 5156 Relief Maintainer with Sunday and Monday rest days. Claimant H. J. Hunt bid the vacancy and took the position. The Organization argues that the Carrier's actions violated Rules 1, 5, 56 and 80 insofar as they clearly deviated from assigned work days of Monday through Friday with rest days of Saturday and Sunday. The Organization argues that this continuing claim exists due to the fact that the Carrier violated the Agreement in failing to notify and negotiate with the Organization for a change in agreed upon rest days. The Organization argues that on this property there is a long-standing practice that for instances such as this, positions cannot be discontinued and new ones created to perform the same work by attempting to evade the Rule regarding rest days. In this instance, the Carrier changed the disputed position from a Relief Maintainer into a Maintainer with absolutely no proof that there was any operational need to create new weekend coverage. The Organization argues that these new rest days are unnecessary; and even if there had been a need, the procedure requires an agreement to do so. There was no agreement; Rule 5 governs; it states in part that ". . . the days off will be Saturday and Sunday."

The Carrier argues that this issue is not new to this property; that this is not a continuing claim; that this is not timely as per Rule 69A; and that the claim at bar has no support in Rule 5 or the Agreement. The Carrier contends that this is a proper application of the Agreement Rules, in that Rule 5(e) and Rule 32 permit the Carrier to change a Signal Maintainer's rest days. Rule 5(e) permits the Carrier if "an operational problem arises which the carrier contends cannot be met under the provisions of Section A of this Rule, and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday . . . the dispute may be processed as a grievance . . . ." In this instance, the Carrier argues that the position had been staggered since September 2007. It had been previously assigned since October 2007 to Obrien. This was a bulletin to re-advertise an already existing position one year after it had been required to work Saturdays. There was nothing new about this position because a Sunday, Monday rest day position was necessitated by operational need. The Carrier did not violate the Agreement.

Unlike many of the Awards cited by the Organization (e.g. Third Division Awards 31471 and 22242) there are three specific points that occur in this instance. First, the statement of April 4, 2009 by Signal Maintenance Manager Ron Moritz documents that the position that the Claimant bid on was a vacancy on an already

existing position with Sunday – Monday rest days occupied since October 2007 and vacated when the former occupant bid off to a signal job in Omaha, Nebraska. Second, the same statement and on-property correspondence supports the Carrier's position that the North Platte, Nebraska, terminal is "one of the largest terminals" and "has always had a seven day position due to the heavy traffic and signal demands." Moritz documented that need and stated that due to the "increasing volume of train traffic, Monday – Friday coverage was not handling the 24/7 requirements to keep a terminal the size of North Platte on pace." Lastly, Rule 32 and the Awards cited by the Carrier are on point with the instant facts (Third Division Awards 40608, 37018, and 31295). Accordingly, given the proof of a necessitated staggered prior position and activity and no documented showing of the Carrier's failure to abide by the Agreement, 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 24th day of April 2013.