Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41611
Docket No. SG-40347
13-3-NRAB-00003-080146

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. J. Howard and S. J. Zerbst, for one and one-half hours each at their respective half-time rates of pay, account Carrier violated the current Signalmen's Agreement particularly Rule 13, when it required the Claimants to attend a meeting on August 24, 2006, outside of their normal work hours and then failed to compensate them at their time and one-half rate of pay. Carrier's File No. 1463215. General Chairman's File No. N 13 645. BRS File Case No. 13808-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.

As background, the Claimants were required to attend a meeting outside of their normal work hours on August 24, 2006. They attended and were compensated at their straight time rates of pay setting in motion this dispute. The Organization and the Carrier dispute the proper compensation due to the Claimants given the applicability of Rule 13, which states, in pertinent part:

> "Time worked preceding or following and continuous with a regularly assigned eight (8) hour work period will be computed on actual minute basis and paid for at time and one-half rate, the regularly assigned eight (8) hour work period will be paid at straight time rate.
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> * * *
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> Work in excess of forty (40) straight time hours in any work week will be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another, to or from a furloughed list, or where the rest days are being accumulated."

The Carrier contends that because the meeting was not "work," the Claimants were properly compensated at the straight time rate of pay. The Carrier points to Public Law Board No. 6459, Award 12, which held that any time required for "mutual benefit" does not meet the terms of language which references "work" or "activity" or "service" to be compensated at the time and one-half rate of pay. The Organization argues that the meeting constituted "work" and under the Rule, supra, was to be paid for at the time and one-half rate. This dispute centers on the nature of the meeting.

The Organization strongly argued that it proved that the meeting was "work" and not training. That proof consisted of the submission of the Local Chairman's statement that he attended the meeting and that it clearly fit the language of Rule 13. He stated, in pertinent part:

> "I was in attendance at this meeting and at no time was there any training. This meeting was held for review of an accident in which an employee was injured and MSM Ron Short read an injury notice that everyone already had a copy given to them."

The Organization argues that the Claimants could easily have been permitted to read the notice of the injury themselves, negating the claim.

Having made a prima facie case, the Board reviewed the full record to ascertain if the Carrier rebutted the Organization's position. The Board finds that the Carrier did do so. The Carrier contended that this was more than a mere reading of an injury notice; the discussion included "train safety, flu shots and upcoming signal projects," as well as, "the 'new' discipline policy that covers the employees and addressed a recent problem involving trespassing."

The Board finds that although the Claimants were required to attend the meeting, it did not constitute "work" under the language of the Agreement. The time spent was beneficial to the employees as well as to the Carrier and, therefore, fits those prior Awards, which have held that any mutually beneficial meeting of instruction is not considered "work, time or service" within the meaning of the Rule. There exists no evidence in this record to conclude that the only discussion item covered related to the Local Chairman's letter, or any rebuttal to the Carrier's assertion after talking with MSM Short that it covered a number of other instructional issues. Nor does the Board find any evidence that the Claimants performed any actual "work" during the time disputed; nor any required "service" as that term is used. Therefore, 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
(
(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.