Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41629
Docket No. SG-41646
13-3-NRAB-00003-110230

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 E. C. Hiekkanen, S. R. Godfrey, G. P. Gawrysiak, J. K. Rasmussen, P. E. Dempsey, and N. D. Lindahl, for an additional $4.50 per twenty-five miles traveled on each occasion that they traveled from their homes to work, and from their common lodging facility back to their homes, account Carrier violated the current Signalmen's Agreement, particularly Rules 36 and 80, when it failed to properly compensate the Claimants their travel allowance starting on December 2, 2009, and continuing until this dispute is resolved. Carrier's File No. 1530716. General Chairman's File No. N 36 870. BRS File Case No. 14521-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 Organization filed this claim alleging the Carrier violated Rules 36 and 80 in failing to properly compensate the Claimants for travel. The claim is for all six members of Gang 2120, which has an advertised workweek of eight days on and six days off. The Gang had unanimously agreed to request a change in the workweek. The Carrier agreed to permit the gang to work four ten hour days. Compensation under Rule 36 would be at $4.50 for every 25 miles traveled.

The Organization argues that the Carrier was aware of the fact that the gang no longer had unanimous agreement to work four ten hour days. The claim is a continuing claim beginning December 2, 2009 when the gang was no longer unanimous and, therefore, the four ten hour day, with travel compensation was voided. From that time on the Organization maintains that the proper travel compensation was $9.00 for every 25 miles traveled. It argues that the General Chairman notified Labor Relations on the Claimants' behalf and no change was made.

The Carrier denies the violation, arguing that the Claimants never notified management that they wanted to change their agreed upon work schedule. Additionally, the fact is that they continued to work the agreed and requested four days on and three days off and were properly compensated at $4.50 for every 25 miles traveled as per the Agreement. Nothing in Rule 36 has any relationship to or mention of the General Chairman or Labor Relations on anyone's behalf. If the Claimants changed their minds, management had to be notified and it was not. Management was unaware of their desired change and, accordingly, no violation occurred.

The Board carefully read the on-property record and studied the evidence presented, as well as the language of Agreement Rule 36, which states, in pertinent part:

> "At management's request Zone Gangs, with the unanimous concurrence of the gang members, may elect to accept a work schedule of 4 days on and 3 days off. Such election will not reduce the $9.00 per 25 mile travel allowance. Consistent with operational needs, Zone Gangs, with the unanimous concurrence of the gang members, may request to work a schedule of 4 days on and 3 days off. Such request will result in the reduction of the travel allowance to $4.50 per 25 miles."

There is no dispute that the gang members made a request to work four days on and three days off and the Carrier was able to accommodate the request and thereafter reduced the travel allowance to $4.50 per 25 miles. The dispute at bar is over the fact that the Claimants continued to be paid as if they continued to have unanimous agreement

when two members (Rasmussen and Dempsey) were detached from the gang and moved to work in Iowa, a long distance from their homes. The other four members continued to work on the original gang and close to their homes.

The language of Rule 36 is clear and unambiguous. It sets up no specific procedure requiring notification parameters. There is no clear statement as to how notification should occur. What is specific in the language is the phrase "unanimous concurrence" of the gang members. The Board finds that language decisive. What meets the Organization's burden of proof are unrefuted statements and proof that management knew that there was no longer unanimous agreement between the six gang members. In this record, the Board finds proof in the email of the gang's manager, Manager Signal Construction R. Nash that the "letter dated January 27, 2010 was the first I was aware that the Gang was requesting to go to a 8 and 6 schedule." Moreover, the General Chairman notes that when the two employees were moved to work in Iowa in the beginning of December 2009, he made the request on their behalf that they be returned to the eight days on and six days off. The Carrier did not do so and was required to pay the $9.00 allowance, rather than the $4.50 allowance, which it did not do. In fact, it continued to pay the lower rate until the Claimants' positions were abolished on March 16, 2010.

The Carrier's arguments that Management was not notified are negated by the Statement from J. Rasmussen, which clearly states that the unanimous concurrence ended on December 1, 2009. It is difficult to determine an exact date when Management knew, but Management should have known when the two employees moved to Iowa that the gang would no longer be unanimous and accepting the $4.50 allowance, rather than the $9.00 allowance for the long drive of nearly ten hours and 650 miles from home. To argue, as the Carrier does, that the Gang remained unanimous is not persuasive. To argue that Management had no knowledge of the break in unanimous concurrence is likewise not persuasive. Rasmussen's statement regarding discussions with Managers Nash, Eifealdt and Hiekkanen document that there was knowledge, including the vote of February 1, 2010, when it was clear that Claimant Rasmussen voted against the four and three. The December 14, 2009 email from Wayne to Claimant Dempsey states that he was aware the two employees had been moved to Gang 5120 and states: "also I was told they all wanted to go back to the 8 and 6 work schedule that the gang was advertised. Has this issue been resolved?"

In short, the claim has merit. The unanimous consent did not continue. The Carrier had the right to continue to work the four and three, but with the proper compensation. Any employee in the gang had the right to veto the four and three, removing "unanimous concurrence." The Board carefully reviewed arguments regarding

the claim dates. The Carrier argues strongly before the Board that the proper Management individual was Nash, but we find no clear statement of proof. The Carrier also argues that Management was not aware, but the Board is persuaded that Management was aware. The last fundamental question is when Management was aware.

The Board carefully reviewed this issue. The statement from Rasmussen states that he was attempting resolution only from November 30 to December 10, 2009, when they were working in Iowa. The same statement indicates that a vote on February 1, 2010 was not unanimous. Statements in the record document that the Carrier was informed in the first week of December that there was no longer unanimous consent. Therefore the four days on and three days off was no longer viable. A return to the eight days on and six days off was mandated by the parties' Agreement. The Board is persuaded that the Carrier was well aware from the beginning that the unanimous concurrence was gone and, therefore, the return to eight days on and six days off was necessitated. The Carrier had the Agreement right to schedule the gang for four days on and three days off, if it concurred, but in working the Claimants without unanimous concurrence until the abolishment on March 16, 2010, dictates that the claim must be sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of April 2013.