Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41829
Docket No. SG-41512
14-3-NRAB-00003-110108

The Third Division consisted of the regular members and in addition Referee Michael Capone 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 Railroad Corp. (Metra):

Claim on behalf of C. Cross, for 32 hours at the halftime rate of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 10, 12, 15, 74, and the current Side Letter on Vacancy Relief Positions dated January 1, 2009, when it required the Claimant to not work on a regularly assigned work day for the purpose of avoiding overtime on the dates of September 29, through October 2, 2009, and denied the Claimant the opportunity to be paid overtime per the Agreement. Carrier's File No. 11-21-742. General Chairman's File No. 33-ME-09. BRS File Case No. 14490-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.

On November 23, 2009, the Organization filed this claim alleging that the Carrier violated Rules 10, 12, 15, 74, as well as the January 1, 2009 Side Letter on Vacancy Relief Positions, when it required the Claimant to not work his regularly assigned work day in order to avoid paying the Claimant overtime. The Organization stated that the Carrier's actions violated the Agreement when it changed the Claimant's starting times and forced him to "lay off" so as to avoid overtime. The Organization asserted that the Carrier unfairly denied the Claimant additional earning potential for the day he was told to stay home.

The Organization asserts that it is not in dispute that the Claimant holds a Vacancy Relief Maintainer position whose designated rest days are Saturday and Sunday. The Claimant worked seven consecutive days – Monday thru Friday of his regularly assigned hours – along with his rest days of Saturday, September 26 and Sunday, September 27, 2009. The Carrier instructed the Claimant to stay home with pay on Monday, September 28, and he returned to work on Tuesday, September 29 and completed his assigned workweek on Friday, October 2, 2009. The Organization argues that forcing a break in the Claimant's consecutive days of service so as to avoid paying additional overtime that would have been payable beginning September 29 through October 2, 2009, violates the parties' Agreement.

The Organization maintains that the issue before the Board is whether the Carrier can order the Claimant to not appear for work on an assigned work day, with pay, to nullify the additional one-half time penalty for all subsequent hours worked during the regularly assigned workweek, as provided for in Section 5 of the January 1, 2009 Side Letter. The Organization argues that Section 5 was designed to protect against the Carrier assigning Vacancy Relief Maintainers to work on both of their rest days by paying overtime after the eighth consecutive day of work. Further, it contends that the Carrier is unfairly affecting the Claimant's earning potential on the day he is forced to stay home.

Conversely, the Carrier asserts that the Organization failed to prove that it violated the Agreement. The Carrier argues that there is nothing in the Agreement that prevents it from resting an employee with pay on a regularly assigned workday. It further contends that Section 5 provides for a "penalty" payable to the Claimant

if required to work more than eight consecutive days. The Carrier contends that the "penalty" is an incentive to rest Vacancy Relief Maintainers before requiring them to work past the eighth consecutive day. The Carrier contends that the Side Letter does not restrict it from resting employees and that the deterrence is defined as a "penalty" as opposed to overtime, which is not provided for in Section 5. The Carrier also asserts that it is an established past practice to rest employees of various classifications, with compensation, which it submits confirms its unrestricted right to rest the Claimant on his assigned rest day.

The relevant contract language applicable to this dispute, which is Section 5 of the above-mentioned Side Letter reads, in pertinent part, as follows:

> "In the event the Vacancy Relief employee is required to work more than eight (8) consecutive days at the straight time rate he shall be entitled to an additional ½ time penalty per hour for straight time work each day in addition to any other compensation."

The Board finds that the Organization failed to prove with substantial evidence that the Carrier violated the parties' Agreement. The record does not contain any support for a conclusion that any of the Rules cited were violated. The Board also finds that the Agreement is silent with regard to whether the Carrier is prohibited from resting a Vacancy Relief Maintainer, or any other employee, with pay, in order to avoid paying a financial penalty. Absent any express language prohibiting the Carrier from paying an employee to stay home, the Board looks for an established past practice that would constitute such a Rule. Neither party to the dispute presented any documentary evidence that a past practice exists in the application of Section 5 that favors their respective argument.

The only Rule applicable to the dispute is Section 5, which entitles a Vacancy Relief Maintainer required to work more than eight consecutive days with a penalty payment. To avoid the penalty the Carrier exercised its option, unfettered by the parties' Agreement, to pay the employee to stay home. The Carrier opted to not work the Claimant, with pay, by not requiring his service and providing him with a rest day, which is what the threat of a penalty is meant to accomplish. The Carrier, in effect, recognized that the Claimant worked his rest days and avoided the penalty by providing him a rest day after he worked seven consecutive days. The Rule is

specific in stating that the penalty is payable when the employee is "required to work more than eight (8) consecutive days." Only the Carrier can require a Vacancy Relief Maintainer to work more than eight days. Here, the Carrier chose not to require the Claimant to work. The Agreement does not prohibit the Carrier from resting employees with pay on a regular assigned workday.

The parties differ as to the intended results the provision was to accomplish. The Organization asserts that the intent of Section 5 was to penalize the Carrier for not recognizing at least one of the Claimant's rest days, which he was required to work. That would lead to the conclusion that the Claimant is entitled to work eight consecutive days in order to earn additional overtime because he was required to work both of his rest days. However, Section 5 does not manifest that intent. The clear and unambiguous language of Section 5 does not force the Carrier to work the Claimant more than eight days because he worked both rest days and, therefore, subject itself to a penalty. The Rule as written obligates the Carrier to pay the penalty only if it decides to require the Vacancy Relief Maintainer to work his relief days and beyond the eighth consecutive day. Here, the Carrier chose not to suffer the penalty and forfeited the Claimant's services.

As previously held by the Board in Third Division Award 10888, "We are not authorized to read into a Rule, that which is not contained therein, or by an award add to or detract from the clear and unambiguous provisions thereof." Legions of precedential Awards have enunciated this long-standing principle of contract construction and interpretation.

Based on the foregoing, the Board finds that the case record lacks the requisite substantial evidence that the Carrier violated the Agreement. Accordingly, 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 20th day of March 2014.