

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 42132
Docket No. SG-41421
15-3-NRAB-00003-100341

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 Rail Corp.:

Claim on behalf of G. Arrington, for all hours worked, when not relieving, outside of 7:00 a.m. to 3:00 p.m. time period from April 30, 2009, until May 17, 2009, account Carrier violated the Agreement especially but not limited to Rules 10, 48, and 68, when it changed the hours of the Vacancy Relief position to 2:00 p.m. until 10:00 p.m. and did not compensate the Claimant for work outside of normal assigned hours. Carrier’s File No. 11-32-721. General Chairman’s File No. 11-RI-09. BRS File Case No. 14451-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.

This dispute arises from the Carrier's action of changing the regular working hours of a first shift Vacancy Relief Maintainer (VRM) position, headquartered at Blue Island on the Rock Island District, from Monday-Friday, 7:00 A.M. to 3:00 P.M. (first shift) to Thursday – Monday, with weekday hours from 2:00 P.M. to 10:00 P.M. (second shift), and weekend hours from 8:00 A.M. to 4:00 P.M. (first shift). It appears that the Claimant exercised his displacement rights pursuant to Rule 68, and left the position after May 12, 2009. He seeks overtime for the hours worked outside of his regularly scheduled first shift weekday position, when he was not relieving an absent Maintainer. The Carrier bulletined this position as a Thursday-Monday second shift (2:00 P.M. to 10:00 P.M.) position thereafter. The record reflects that it was assigned on May 18, rebulletined on May 26, and reassigned to the same employee on June 1, 2009.

The claim is based on Rules 10, 48 (Bulletin, Uniform Standard Form), and 68, as well as the Vacancy Relief Agreement of January 1, 2009, the pertinent parts of which appear below.

“Rule 10 - STARTING TIME

- (a) The starting time of the work period of all employees, where one shift is worked, or the first shift where two or three shifts are worked, shall be established between the hours of 6:00 a.m. and 8:00 a.m., consistent with the requirements of the service. The starting time of employees shall not be changed without first giving the employees affected sixteen (16) working hours' notice. Starting time shall not be temporarily changed for the purpose of avoiding overtime.
- (b) A second shift may be started up to two hours prior to the expiration of the first shift or at any time thereafter, but not later than twelve midnight.

Rule 68 - BULLETIN POSITIONS, CHANGE IN

* * *

- (b) When there is a change in the assigned day off in any bulletined position, the employee assigned to such position may assert his displacement seniority

(c) When any of the following changes occur in bulletined signal maintenance positions:

* * *

(2) A change in the starting time in excess of one (1) hour.

APPENDIX M - VACANCY RELIEF POSITIONS

* * *

Section 1 (b) Vacancy Relief employees shall be assigned an eight-hour day. When consistent with the needs of service, preference will be given to a Monday through Friday workweek with Sunday as a rest day. Vacancy Relief employees assigned to a workweek other than Monday through Friday will not be bulletined in a gang nor shall they be assigned to a gang when not relieving.

Section 2 (a) When performing relief service, the Vacancy Relief employee will assume the duties, assigned hours, assigned rest days, and headquarters of the position he is relieving.

(b) When not relieving, the relief employee may be used to perform other work as assigned except as provided for in Section 1(b). However, his assigned hours, assigned rest days, and headquarters are those of his permanent position.”

The Organization asserts that the Carrier violated Rule 48 by not copying it on the notification of change of hours, as required, despite its request. It notes that a VRM is used to relieve a Maintainer who is off work and not to relieve another VRM, and when not relieving, has always had a day shift starting time. The Organization points out that (1) the Vacancy Relief Agreement does not mention an afternoon shift, (2) one was never contemplated when it was negotiated inasmuch as there has never been a second shift VRM, and (3) the position is considered to be a one shift position pursuant to Rule 10, with a required starting time between 6:00 and 8:00 A.M. It argues that while Maintainer positions can have second shift relief positions, they can only do so when there is a first shift position they are relieving – which was not the case here – positing that there would be no one to relieve on the second shift. The Organization

seeks pay for all out of schedule work performed by the Claimant under these changed shift hours and days.

Conversely, the Carrier argues that none of the cited Rules or the Vacancy Relief Agreement restricts it to bulletining VRM positions only on the first shift, and the language indicates that the Parties contemplated having more than one shift when necessary. It contends that Rule 10 does not require specific classifications or number of positions for each shift, and the Carrier is free to assign any number of people on each shift as the operation necessitates. The Carrier states that there is no requirement for a handshake turnover between shifts, as noted by its ability to start a second shift after the completion of the first shift.

A careful review of the record convinces the Board that the Organization established a violation of Rule 10 and the Vacancy Relief Agreement, albeit not exactly the one argued and focused on in its correspondence on the property. There is no contention that the Claimant was not given 16 working hours' notice of the change in his starting time as required by Rule 10, and he was permitted to exercise his displacement rights pursuant to Rule 68, leaving the position after May 12, 2009. The record is unclear as to when notice was given to the Organization about the change. The instant claim seeks a remedy for the Claimant for the period he remained on the position after its work days and starting times were changed, and does not extend to protesting the Carrier's bulletining or rebulletining of a second shift VRM position with work days of Thursday through Monday, which occurred after the Claimant displaced to another position, and which is the subject of a different claim, where the Parties' arguments concerning the propriety of the Carrier establishing a second shift VRM position are discussed.

What occurred in this case was not a change to a second shift VRM position, but the creation of a split shift position, with weekday second shift hours and weekend first shift hours. Section 1(b) of the Vacancy Relief Agreement indicates that preference will be given to a Monday through Friday workweek with Sunday as a rest day consistent with the needs of the Carrier's service. The Carrier never showed, or argued, what, if any, service needs required a deviation from this established workweek. It relied solely on the fact that the Rules and Vacancy Relief Agreement did not limit its right to create a second shift VRM position. Absent a showing of the service need to create some second shift hours and daytime weekend work for a position originally bulletined as a weekday first shift position, the Board can find no justification in the language of the cited Rules or Vacancy Relief Agreement that permits the Carrier to make the type of changes to the regular VRM position that it did in this case. Therefore, the claim for

payment for all hours worked by the Claimant between April 30 and May 12, 2009 outside of his Monday through Friday 7:00 A.M. to 3:00 P.M. regular shift, when not relieving, is granted as the appropriate remedy for this violation.

AWARD

Claim sustained in accordance with the Findings.

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 13th day of July 2015.