

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42133
Docket No. SG-41422
15-3-NRAB-00003-100342**

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 V. J. Bostjancic, III, for all hours at the overtime rate worked outside normal duty hours of 7:00 a.m. to 3:00 p.m. starting on May 18, 2009, and continuing until this claim is resolved or Claimant is no longer on position, account Carrier violated Rule 10 when it advertised and awarded a Vacancy Relief position with improper duty hours. Carrier’s File No. 11-32-722. General Chairman’s File No. 12-RI-09. BRS File Case No. 14452-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 bulletining a Vacancy Relief Maintainer (VRM) position, headquartered at Blue Island on the Rock Island District, with normal work hours of Thursday–Monday, from 2:00 P.M. to 10:00 P.M. (second shift), instead of Monday–Friday, from 7:00 A.M. to 3:00 P.M. (first shift). It appears that the Claimant was assigned this position on May 18 and he subsequently vacated it at some point; it was rebulletined on May 26, and reassigned to the Claimant on June 1, 2009. The issue raised is whether the Carrier can create a second shift VRM position without having a first shift position.

The claim is based on Rule 10, 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.

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 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 because there has never been a second shift VRM, and (3) the position is considered to be a one shift position under Rule 10, with a required starting time between 6:00 and 8:00 A.M. It argues that the Agreement always contemplated shift positions to be Maintainer positions assigned to a plant or territory, because they relieve day Maintainer assignments, and there is a turnover between shifts with recounting of status. The Organization notes that when the first shift VRM is relieving another position, the newly created second shift VRM is not in relief of anyone because no day shift VRM is working. It points out that the Claimant was force assigned this position as the lowest man on the seniority roster, and seeks overtime pay for all work performed by the Claimant outside of the normal duty hours of 7:00 A.M. to 3:00 P.M.

The Carrier argues that Rule 10 recognizes its right to establish a second shift at a location where a first shift is headquartered. It contends that it complied with Rule 10 in creating this second shift VRM position because there are two first shift VRM positions filled that are also headquartered at Blue Island, and the starting time of 2:00 P.M. falls within the two hour period prior to the expiration of the first shift. The Carrier notes that records show that the first shift VRM’s worked their bulletined positions on a substantial number of days, and relies upon Third Division Award 17477 in arguing that it has a right to work second shift positions even if day shifts positions exist but are not filled. It asserts that neither Rule 10 nor the Vacancy Relief Agreement restricts it to bulletining VRM positions only on a first shift, restricts the classifications or positions that may be bulletined to second shift,

or indicate that the VRM must relieve someone when working their regularly bulletined position. The Carrier states that it has the right to establish positions absent any Agreement constraints, citing Third Division Award 29215. It posits that the negotiation of the Vacancy Relief Agreement effective January 1, 2009 supplants any argument as to past practice relied upon by the Organization. The Carrier also argues that, while the claim filed on behalf of the Claimant from May 18 until he no longer holds the position is a proper claim, the Organization cannot seek a remedy for any future occupant of that position, which would be a claim on behalf of an unspecified employee based on a future occurrence.

A careful review of the record convinces the Board that the Organization has not met its burden of establishing a violation of Rule 10 and/or the Vacancy Relief Agreement in this case. The instant claim seeks a remedy for the Claimant for the period he remained on the second shift VRM position based upon the Organization's assertion that these Rules prohibit the Carrier from bulletining a second shift VRM position. Even if the Carrier did not specifically mention the potential of establishing such position when it negotiated the Vacancy Relief Agreement, its terms supplant all prior Agreements, and, in effect, any past practice based thereon. Such Agreement does not specifically prohibit the creation of a permanent VRM position on other than the day shift, so long as the requirements of establishing permanent headquarters and assignment to an eight-hour day for each VRM position are complied with, and preference given to a Monday through Friday workweek consistent with the needs of the Carrier's service. Nor does it require all VRM positions to be on the first shift, or to follow directly from another position that has been worked on each day. See, e.g. Third Division Award 17477. The Organization did not take issue with the Carrier's change in the Monday through Friday workweek in this case.

Rule 10 clearly gives the Carrier the right to start a second shift within certain time parameters of the first (which were complied with herein), and contemplates the existence of two or three shifts. The Organization did not dispute the Carrier's recitation of the Signal Department classifications and positions that existed at Blue Island during the claim period, or that two first shift VRM's were employed, nor the information set out in their time records. The Organization can point to no other language that supports a limitation on the Carrier's right to establish the second shift VRM position in dispute in this case. Absent such

Form 1
Page 5

Award No. 42133
Docket No. SG-41422
15-3-NRAB-00003-100342

limitation, there is no showing that the Carrier failed to comply with the parameters of establishing a second shift VRM position contained in Rule 10 and the Vacancy Relief Agreement. Accordingly, the claim must fail.

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 13th day of July 2015.