

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42441
Docket No. SG-41574
16-3-NRAB-00003-110173**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall 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. (formerly Northeast Illinois Regional Commuter Rail Corp.):

Claim on behalf of J. C. Hansen, for 16 hours at the overtime rate of pay, account Carrier violated Agreement Rules 14, 15, and Appendix D of the Signalmen's Vacation Provisions, regarding overtime service, when it worked another employee who did not have exclusive rights to the overtime worked on November 26 and 27, 2009, causing the Claimant a lost work opportunity. Carrier's File No. 11-21-746. General Chairman's File No. 100-RI-10. BRS File Case No. 14532-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 case involves a time claim concerning the Vacation provisions contained in the Collective Bargaining Agreement (CBA) between the parties.

The basic facts of the case are not in issue. The Claimant was assigned to work the second shift Blue Island Signal Maintainer position, with a regular work week of Thursday through Monday. The Claimant was on vacation from Thursday, November 19, 2009, through Monday, November 23, 2009. Tuesday, November 24 and Wednesday, November 25, 2009, were his sixth day and rest day respectively. Thursday, November 26, 2009, and Friday, November 27, 2009, were the Claimants' regular workdays for the week following his vacation. They were also holidays, as the Thanksgiving holiday was observed on the two dates. On November 26 and 27, 2009, the Carrier worked the Vacation Relief Maintainer who had covered the Claimant's position while he was on vacation.

The Organization, on behalf of the Claimant, says that he was entitled to work the optional overtime on those holidays, and would have been paid the overtime rate for the position had he done so. They say the individual who worked the position was not an employee assigned to the district in question.

The Carrier does not dispute that the overtime rate is the appropriate rate. However, they say that, in working the incumbent who had filled in for the Claimant while the Claimant was on vacation, they followed the CBA appropriately. They point out that this vacation-relief employee was senior to the Claimant, on the entire roster. They also say that the Claimant did not show up on the holidays.

The parties agree that the following CBA provisions are the relevant ones:

RULE 14. HOLIDAY WORK.

(a) Work performed on the following holidays, namely: New Year's Day, President's Day, Good Friday, Memorial Day, Fourth of July, Labor Day, New Year's Eve, Thanksgiving Day, Day After Thanksgiving, Christmas Eve (the day before Christmas is observed) and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday), shall be paid at one and one-half times the basic straight time rate.

RULE 15

SECTION 1-- (a) OVERTIME--BEFORE AND AFTER BASIC DAY:

The hourly rates named herein are for an assigned eight (8) hour day. All service performed outside of the regularly established working period shall be paid as follows:

Overtime hours, either prior to or following and continuous with regular working period, shall be computed on the actual minute basis and paid for at one and one-half times the basic straight time rate.

Time worked in excess of sixteen (16) hours of work in any twenty-four (24) hour period, computed from the starting time of the employee's regular shift, shall be paid for at double their basic straight time rate.

When overtime service is required of a part of a group of employees who customarily work together, the senior qualified available employees of the class involved shall have preference to such overtime if they so desire.

NATIONAL VACATION AGREEMENT

An employee's vacation period shall not be extended by reason of any of the ten recognized holidays (New Year's Day, Washington's Birthday, Good Friday, Memorial Day, Fourth of July, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Eve (the day before Christmas is observed), and Christmas) or any day which by agreement has been substituted or is observed in place of any of the ten holidays enumerated above, or any holiday which by local agreement has been substituted therefore, falling within his vacation period."

In analyzing this same agreement, Referee Ed Benn held, in pertinent part in Third Division Award 40408:

“The Carrier asserts that the Claimant was not entitled to be called for the overtime opportunity because he was on vacation and the junior employee was offered the work because he was covering for the Claimant as a vacation relief employee while the Claimant was on vacation. However, the overtime opportunity did not arise during the Claimant’s vacation or on the weekend following his vacation (the Claimant’s regularly scheduled days off). Instead, the overtime opportunity arose on the first day of the Claimant’s new workweek following the week of his vacation. Under Rule 15, the Claimant should have been called before the junior employee. Because the Claimant was denied an overtime opportunity, he shall be compensated for eight hours at the overtime rate in accordance with the Agreement.”

While it is true that Award 40408 dealt with an employee junior to the Claimant, and in the present case the employee is senior, he is senior with respect to the complete territory, not the territory in question. Further, this Board finds Referee Benn’s logic unassailable – the Claimant’s vacation had ended prior to the disputed time.

In another case between the parties, Third Division Award 37202, the Board held:

“A careful review of the record convinces the Board that the Claimant, as the senior qualified employee working in the classification at the headquarters where the overtime is performed, was entitled to the holiday overtime assignment on July 5, 1999, absent a showing that he was unavailable for such assignment. The language of the Letter of Agreement requiring that an employee ‘has returned to regular service’ does not disqualify the Claimant, because his regular schedule commenced on Monday, July 5, 1999, and he was to be considered in the same position as all other employees who were scheduled and not working due to the holiday. The Agreement does not require that an employee be physically at work to have ‘returned to regular service.’ Further, Supplement No. 22, by its language, applies to the procedure for making oneself available for rest day overtime preceding or following an employee’s vacation. As we are not here involved with a rest day overtime assignment, the fact that the Claimant did not notify the correct individual that he was

available for rest day overtime does not disqualify him from a holiday assignment during his regular schedule.”

In this case, we are also dealing with an employee who returned from vacation to his regular assignment. As in Award 37202, it seems clear to this Board that the Claimant had returned. There is no evidence on the record that he was unavailable for work. He had returned to his job. Therefore, the Carrier should have offered the overtime in question to the Claimant.

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 31st day of October 2016.