

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42558
Docket No. SG-43100
17-3-NRAB-00003-150313**

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**
(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 B.L. Corey, S.F. Gawith, W.M. Gibbs, D.E. Larsen, T.L. Murphy, S.C. Stuck and J.R. Williams, for each to receive additional compensation at their respective half-time rate of pay for every hour they work on Zone 4, beginning on January 6, 2014, and continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rules 26 and 65, when it directed the Claimants to work off their assigned Zone and refused to compensate them the additional half-time that they are contractually entitled to. Carrier’s File No. 1600935. General Chairman’s File No. S-26, 65-1365. BRS File Case No. 15172-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.

This is a claim, brought on behalf of a number of Claimants, for being denied an extra one-half time pay for work done off of their normally assigned zone-gang territory.

This claim brings into play two provisions of the regular Collective Bargaining Agreement (CBA) between the parties (Rules 26 and 65) and, in the view of the Carrier, provisions of a separate Positive Train Control (PTC) agreement negotiated in addition to the CBA.

It is uncontested that the regular CBA provisions provide for time and one half pay for zone employees when used off of their normal zone.

The Rules in question are as follows:

“RULE 26 – TRAVELING GANG WORK

The territory of the Union Pacific Railroad coming under the jurisdiction of this collective bargaining agreement will be divided into five work zones, as per Rule 34:

Zone 1: Territory covered by seniority districts 1, 2, 3 and 4

Zone 2: Territory covered by seniority districts 5, 6, 7 and 8

Zone 3: Territory covered by seniority districts 9, 10 and 11 Zone 4:

Territory covered by seniority district 12

Zone 5: Territory covered by seniority district 14

If a gang is to be a mobile gang, it will fall under this Rule, unless it is a per diem gang established under Memorandum Agreement July 18, 1997 (See Appendix I). Employees on zone gangs will work a schedule of either eight (8) days on and six (6) days off or twelve (12) days on and nine (9) days off. It is the intent of the parties to work employees on an eight (8) days on and six (6) days off schedule when possible given the operating requirements of the Carrier. In the event that the Carrier must work zone gangs on an eight (8) days on/six (6) days off schedule on their rest days, the Carrier will guarantee a minimum of four (4) consecutive rest days off between work periods. In the event the Carrier must work zone gangs on a

twelve (12) days on/nine (9) days off schedule on their rest days, the Carrier will guarantee a minimum of six (6) consecutive rest days off between work periods. The work schedule of gangs working compressed schedules of either eight (8) days on and six (6) days off or twelve (12) days on and nine (9) days off will, with a majority vote of all members of the gang, commence their work schedule on either a Tuesday or Wednesday.

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. For employees on a zone gang, time begins and ends at the common lodging facility.

NOTE: As an example, if a zone gang is working eight on and six off and the Carrier works them for fourteen (14) days straight, they will have the first four (4) days of their work week off and paid at straight time (according to the work schedule) and then they complete their work period by working four (4) days then having their six (6) days off.

Zone gang employees will be reimbursed for actual and necessary expenses (lodging and meals). Employees will receive \$15.00 incidental expense allowance per day worked. Employees will receive \$9.00 for every twenty five (25) miles traveled from home to work at the beginning and end of each work period. The Carrier will give employees notice of work schedules and locations, except in emergency circumstances, so they can plan their travel.

If a mobile unit is moved and employees assigned thereto are not able to move their vehicle during the time the mobile unit is being moved, the employees will be returned to the location of their vehicle at the Company's expense.

If an employee stays at the work location on the employee's days off, meal and lodging costs will be paid by the Carrier, not to exceed the allowance the employee would have received for mileage home.

If an employee travels to a location other than home during the employee's off days, the employee will receive mileage payment (\$9.00 per 25 miles) for the lesser of the travel to the employee's home or the actual travel incurred.

If an employee travels home everyday, the employee will not receive \$9.00 per 25 miles allowance, but will receive the \$15.00 daily incidental expense allowance for each day worked and paid noon meals.

NOTE: It is agreed between the parties that these costs and allowances will be reviewed by the Carrier and Organization at three (3) year intervals.

Zone gangs may be at any location performing any agreement work. Zone gangs performing work on its own zone and on a seniority district where there are involuntarily furloughed employees will be headquartered or abolished at the written request of the General Chairman. Zone gangs will not work across zone lines if employees are involuntarily furloughed in the seniority district where the work is located. If a zone gang is performing work off of its zone, the employees of that gang will receive one and one-half time pay, up until the employees of the gang qualify for double-time, at which time they will be paid at the double-time rate. [Emphasis added]

RULE 65 – LOSS OF EARNINGS

An employee covered by this agreement who suffers loss of earnings because of violation or misapplication of any portion of this agreement will be reimbursed for such loss.”

The PTC Agreement states, in relevant part:

“SECTION B – PTC SIGNAL GANGS

- 1. PTC Signal Gangs may be established on a seniority district with fixed headquarters or established as a Zone Gang.**
- 2. The provisions of Rule 36 [now, as undisputed between the parties, Rule 26] that require UPRR to pay Zone Gang employees at the time and one half rate of pay when working off their zone territory will not apply when they are used off their zone territories during the term of this agreement. Zone gangs will not be used off their zone while gangs from other zones are performing work within their zone. If a zone gang is to be returned to their zone territory because of another gang being assigned on their home zone, the Carrier will have the right to work the gang to the end of their present work period assignment.”**

There were a number of timeliness and procedural issues, concerning certain arguments and evidence, raised in the course of handling this dispute. However, given the findings of this Board, below, we need not deal with those issues.

There is no dispute, in this case, that the Claimants were part of a non-PTC gang which was used off of its normal territory. The issue comes down to an interpretation of the PTC gang language, and whether it applies to the gang in question.

There was significant commentary by both parties as to the intent of the parties at the time of the negotiation. Evidence was presented to this Board from both sides as to what their intent was. However, this Board finds that it need not delve into this parol evidence, as the language seems clear on its face.

The Organization says that this Board needs to look only at Rules 26 and 65. There was a zone gang and it was used off of its territory. Therefore, it is entitled to an extra 0.5 hours per hour worked. They say that the PTC Gang language is limited to PTC Gangs. They say this is clear from the heading of that provision. Section B is labeled “PTC Signal Gangs.” Therefore, they say, all that follows is only applicable to PTC Gangs. Thus, other Zone Gangs are not affected.

It is clear, they say, this was not a PTC Gang. Therefore, the time and one-half must prevail.

The Carrier takes a different approach. They say that the PTC agreement overrides Rule 26 for the life of the PTC Agreement. They say there were other concessions involved in this negotiation, but this Board finds that it need not delve into those for the reasons stated above.

The Carrier points to section B.2 of the PTC Agreement. They say this is a very clear override of Rule 26. Otherwise, they point out, it would be nonsensical since PTC gangs, by definition, would be working off of their territories.

The Board finds that the Organization has failed to meet its burden of proof. The plain language of the PTC Agreement, in the view of this Board, supersedes that of Rule 26. This is supported by there being limitations on when the Carrier may use this power – for example “. . . Zone Gangs will not be used off their zone while gangs from other zones are performing work within their zone.” In the view of this Board, this language would not make sense if it didn’t apply to Zone Gangs in general. As a result, the only logical conclusion is that the PTC Agreement, Section B.2, applies to all Zone Gangs. Thus, the Carrier must prevail in this case.

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 6th day of March 2017.