

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42561  
Docket No. SG-43134  
17-3-NRAB-00003-150358**

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 W.T. Woodward, for 60 hours at his one-half time rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly Rules 26, 44, and 65, when it directed him to work off his assigned Zone on April 1–6, 2014, and then refused to compensate him the additional half-time that he is contractually entitled to. This is a continuous claim as provided for in Rule 56 paragraph D and is meant to capture the additional half-time the Claimant is contractually entitled to in the event Carrier continues to cause him to work off his regularly assigned seniority district zone. Carrier’s File No. 1605142. General Chairman’s File No. N 26 1213. BRS File Case No. 15168-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 essentially a time and potentially a mileage claim. It involves the following CBA Rules:

**“RULE 10 – OVERTIME (SUBJECT TO HOURS OF SERVICE ACT)**

Time worked preceding or following and continuous with a regularly assigned eight (8) hour work period will be computed on actual minute basis and paid for at time and one-half rate, the regularly assigned eight (8) hour work period will be paid at straight time rate. Time worked after sixteen (16) hours of continuous service will be computed on the actual minute basis and paid for at the double time rate until employee is released for eight (8) consecutive hours time off duty.

For purposes of computing sixteen (16) hours of continuous service, as referred to herein, actual time worked will be counted from time on duty until relieved for eight (8) consecutive hours time off duty. Employees will not be required to suspend work during their regular hours for the purpose of absorbing overtime.

It is understood that nothing in this rule requires that the Carrier retain an employee on duty at punitive rate of pay.

In the application of this rule the starting time of new employees temporarily brought into the service in emergencies will be considered as of the time they commence work or are required to report for work.

Work in excess of forty (40) straight time hours in any work week will be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another, to or from a furloughed list, or where the rest days are being accumulated.

Employees worked more than five (5) days in a work week will be paid one and one-half times the basic straight time rate for work on

the sixth and seventh days of their work week except where such work on the sixth and seventh days is performed by an employee due to moving from one assignment to another, to or from a furloughed list, or where the rest days are being accumulated.

There will be no overtime on overtime; neither will overtime hours paid for, other than hours not in excess of eight (8) paid for at overtime rates on holidays, be utilized in computing the forty (40) hours per week, nor will time paid for in the nature of arbitraries, or special allowances such as attending court, investigations, coroner's inquest, boards of inquiry, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of payment for such hours, or where such time is now included in computations leading to overtime.

Where gang men are required to work overtime, the senior man in a class in the gang will be given preference to such overtime work.

#### **RULE 11 – SECOND AND SUBSEQUENT MEAL PERIODS**

Signal employees can be required to work overtime without an opportunity for a second meal period.

When signal employees working 8 hour days are required to work more than ten (10) consecutive hours without an opportunity to eat, they will be paid an arbitrary of one (1) hour at the overtime rate in lieu of a second meal period and cost of such meal. When signal employees working 10 hour days are required to work more than twelve (12) consecutive hours without an opportunity to eat, they will be paid an arbitrary of one (1) hour at the overtime rate in lieu of a second meal period and cost of such meal. An additional one (1) hour arbitrary will be paid for every 5 hour period thereafter.

#### **RULE 13 – ROAD SERVICE**

- A. Employees performing service requiring them to leave and return to their home station on the same day (within 24 hours from regular starting time of their assignment) will be paid continuous time exclusive of established meal period from time

reporting for duty until released at home station. Straight time will be allowed for all straight time work; overtime for all overtime work and straight time for all traveling or waiting. Employees riding on or operating track motor cars or trucks or required to be responsible for Company tools and/or materials while traveling will be considered as performing work as referred to in these rules and will be compensated accordingly.

- B. Employees sent away from home station and held out overnight will be allowed actual time for traveling or waiting during the regular working hours; in addition, travel or waiting time outside of regular hours will be paid for at the straight time rate, until the employee is released from duty at location where suitable eating and sleeping accommodations are available.

If meals and lodging are not furnished by the Company, actual necessary expenses will be allowed until employee is released at his home station.

A relief employee required to travel between two work locations (other than between work locations within the same terminal), in order to provide relief on assigned rest days will be compensated for actual time traveling between such work locations with a maximum of eight hours at the straight time hourly rate of the position on which relief is to be furnished.

- C. Time spent in traveling from one work point to another outside of regularly assigned hours or on a rest day or holiday will be paid for at the straight time rate. Each man will be paid the amount of travel time from one point to another based on the mode of transportation offered by the Carrier, regardless of how any employee actually travels from one point to the other.

#### **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 26**

. . . zone gangs may be at any location performing any agreement work.

Section 4 of Appendix EE provides that: “Commencing with the effective date of this agreement, the Carrier, at its discretion, may begin converting existing Electronic Technician (ET) or Signal Inspector (SI) positions into an ETI position without abolishing and re-bulletining positions.”

Section 7 of Appendix EE states:

“All new vacancies for ETI positions being created, other than through conversion, will be bulletined pursuant to Rule 41 of the Schedule agreement.

#### **RULE 44 – ESTABLISHED POSITIONS**

Established positions will not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of the rules in this agreement.

#### **RULE 61 – PRIVATE AUTOMOBILES**

When employees are requested and are willing to use private automobiles for Company-use, an allowance will be made at the established automobile mileage allowance paid by the Company to its employees.

## **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 Positive Train Control (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.”**

**This case presents two issues already addressed in two separate cases before this Board.**

**The first is whether the PTC Agreement overrides the CBA between the parties, for the duration of the PTC Agreement, with respect to the extra one-half time when a Zone Signaller is used off of his or her normal zone territory.**

**In Third Division Award 42558, this has been answered in the affirmative. The same answer applies in this case, for the reasons adopted in that award.**

**The second issue is whether there was a violation of Rule 44. This Rule basically states that the Carrier can’t abolish a position and re-establish it simply to avoid the extra pay or rules that might otherwise apply.**



As in Award 42560, the Carrier points out that headquarters vs. zone positions contain many different pay criteria. In addition, a zone position allows the Carrier to use the employee across different geographic areas. Further, as in this case, they can use zone employees in different zones.

As a result, this Board finds that the Carrier was within its rights to re-bulletin the position as it did, and to not pay the extra one-half time when the Claimant was used outside his newly bulletined zone.

**AWARD**

**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.**