

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43400
Docket No. SG-44077
19-3-NRAB-00003-170122**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Illinois Central Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of J.R. Green and C.H. Mull II, for their positions to be returned to a four, ten-hour day work week with rest days of Friday, Saturday and Sunday, and compensation at their respective overtime time rates for all hours worked Friday, Saturday and Sunday, from September 24, 2015, continuing until this dispute is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rules 11, 13, and Appendix F, when on September 24, 2015, Carrier changed the Claimants four, ten-hour day workweek to a seven-day work week when the nature of the work did not change. Carrier’s File No. IC-BRS-2015-000018. General Chairman’s File No. IC-017-15. BRS File Case No. 15534-IC.”

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.

Under Rule 11(b) of the parties' Agreement, the "basic workweek for division signal gangs will consist of four consecutive ten-hour days." Historically, signal gangs were scheduled to work "4/10" (four days at ten hours a day) in accordance with Rule 11(b).¹ In 1995, however, the parties amended the Agreement to add Appendix F, which states, in relevant part:

"When the nature of the work is such that signal gangs are needed seven days a week, it will be permissible for the company to establish signal gangs with a seven day workweek—11 hours and 25 minutes a workday followed immediately by seven consecutive rest days...."

The traditional 4/10 workweek does not lend itself as easily to round-the-clock operations as a 7/7 workweek does, and over time the Carrier concluded that in some locations, it needed to schedule signal employees 7/7 rather than 4/10. Beginning in August 2012, it began to transition some gangs to a 7/7 workweek. On or around September 24, 2015, the Carrier changed the workweek of a Chicago gang consisting of Signal Foreman J. Green and Signelman C. Mull from a 4/10 cycle to a 7/7 workweek cycle. The Organization filed this claim on their behalf, alleging violations of Rule 11, Rule 13 and Appendix F.

The Organization argues that Rule 11 is not permissive—it is mandatory: "The basic workweek ... *will* consist of four consecutive ten-hour days." Under Appendix F, the 4/10 workweek can only be changed if "the nature of the work is such that signal gangs are needed seven days a week." If the nature of the work has not changed, there is no basis for the Carrier to implement such a radical shift in employees' work schedules. In this case, the gang worked a 4/10 schedule for four years. There is no evidence that the work had changed in any way when the Carrier unilaterally imposed the 7/7 workweek on the gang. Without evidence on the record demonstrating a change in the nature of the work, the Carrier's actions were, and

¹ One exception to the 4/10 workweek is found in Rule 11(b), which allows a basic workweek of eight consecutive 10-hour days followed by six consecutive days of rest if a majority of the gang elects and management agrees to the alternate schedule.

continue to be, arbitrary and a direct violation of the clear language and established provisions of Rule 11.

According to the Carrier, it did not violate the Agreement when it changed the Claimants' workweek from a 4/10 cycle to a 7/7 workweek cycle. There is nothing in Rule 11, Rule 13 or Appendix F that requires the Carrier to provide proof of the work changing or requires the Organization's concurrence prior to establishing 7-day gangs. Appendix F clearly allows the Carrier to implement 7/7 workweeks, and the Organization may not restrict the Carrier's right to structure its workforce and to determine the nature of the work. The Carrier does not have the burden of proof, but as noted on the property, the nature of the work has changed, due to PTC, acquisitions and other necessary construction and maintenance projects. The work has exponentially grown and work schedules have to be more flexible in order to accommodate operations on a daily basis.

The Board has addressed this issue before, in Award No. 68 of Public Law Board No. 6785, authored by this same Referee. In that case, the Board held (The Appendix H referred to is now known as Appendix F):

"... [T]he qualifying language of Appendix H remains and cannot be ignored. Thus, the ultimate question before the Board is whether "the nature of the work is such that the signal gangs are needed seven days a week." The Organization asserts that the nature of the work cannot have changed, because the employees are performing exactly the same work they did before. But "the nature of work" is not limited to such specific tasks as the employees perform. Other factors affect the nature of work, such as changes in the time period by which work must be completed or changes in the location of work from one geographic region to another. Special projects can affect the nature of work, as can corporate transactions. For instance, the Carrier has acquired several other railroads, such as the EJ&E, and integrating those acquisitions into the Carrier's system may require additional work for all employees. If signal equipment or systems on the newly acquired railroad are not compatible with existing Carrier systems, special effort will be required to ensure that signals throughout the newly enlarged system function safely and seamlessly, as quickly as possible.

Changes in government regulations, particularly by the FRA, may also affect the nature of work. One specific example is the FRA requirement that railroads install Positive Train Control (PTC) throughout their systems. Those regulations came with a timeline for compliance, and that additional work meant more employees having to work more hours in order to get the job done.

Looking at the record as a whole, the Carrier has provided a credible explanation of the circumstances that resulted in the need to change the 4/10 basic workweek for the two gangs that are the subject of this Claim. The Organization has not effectively countered that explanation. Accordingly, the Board finds that the Carrier met the requirements of Appendix H to implement the 7/7 workweek for the affected gangs on March 23, 2013, and the change did not violate the Agreement.”

The reasoning adopted by the Board in Award No. 68 applies to the facts in this case as well. Under the principle of *stare decisis*, the Board must apply that reasoning to this case. The same circumstances that pertained in Award No. 68 still exist, and the Organization has not provided evidence to the contrary. Accordingly, the Board finds that the Carrier met the requirements of (now) Appendix F to implement the 7/7 workweek for the Claimants’ gang on September 25, 2015, and the change did not violate the Agreement. The grievance is denied.

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 18th day of January 2019.