

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44783
Docket No. SG-44543
22-3-NRAB-00003-170717**

The Third Division consisted of the regular members and in addition Referee Meeta A. Bass when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of J.D. Beckett, C.M. Johnson, R. Storbeck, D.K. Winter, and D.C. Witty, for 31.5 hours each at their respective overtime rates of pay, account Carrier violated the current Signalmen's Agreement, particularly Rules 10, 57, and 65, when it refused to grant a properly requested Unjust Treatment Hearing to determine why it unjustly retaliated against the Claimants by failing to permit them to work on a cutover, thereby causing them a loss of overtime opportunity. Carrier's File No. 1666772. General Chairman's File No. S-10, 57, 65-1574. BRS File Case No. 15673-UP. NMB Code No. 172.”

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.

In June 2016, the Carrier's Signal Department performed a large signal cutover project. On June 1–3, 2016, the signal manager changed the cutover schedule of the Claimants. The Claimants alleged that a dispute between the signal manager and foreman caused the manager to withhold overtime assignments from the Claimants. On June 6 and June 27, 2016, the Claimants requested an Unjust Treatment Hearing alleging a violation of Rule 10. Due to the lack of response before August 1, 2016, the Organization submitted its claim alleging a violation of Rules 10, 57, and 65 by letter dated July 28, 2016. By email dated August 1, 2016, the signal manager denied the request for a hearing stating the parties' Agreement covers the issue of work assignment.

The applicable rules are incorporated herein as if fully rewritten, and read as follows:

RULE 10 – OVERTIME

“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 57 – UNJUST TREATMENT

"An employee who considers himself unjustly treated, other than covered by these rules, will have the same right of hearing and appeal as provided in Rule 55 B if written request is made to his immediate supervisor within ten (10) calendar days of cause of complaint. Failing to dispose of the complaint in such hearing, appeal may be taken in accordance with Rule 56. Any complaint made by one employee against another will be made in writing."

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."

By letter dated August 12, 2016, Carrier denied the Organization's claim. The Carrier asserted that the manager denied the request on August 1, 2016. The Carrier acknowledged a dispute of fact and explained that the Rule 10 ultimately covered the issues raised in the claim. By letter dated September 20, 2016, the Organization appealed the Carrier's denial and asserted that the Carrier should have scheduled the Unjust Treatment Hearing as requested and determined the facts and circumstances. By letter dated November 4, 2016, the Carrier responded to the Organization's appeal and reasserted its position that specific rules of the Parties Agreement covered the issue. On November 16, 2016, the parties conferenced the claim without resolving the claim. This claim is now properly before the Board for adjudication.

Position of the Organization

The Organization contends that the Claimants had a right to the Unjust Treatment Hearing and the failure of the Carrier to disregard the request for such hearing is a violation of Rule 57. The Organization maintains that the Claimants are entitled to reimbursement for their loss of overtime work opportunities in accordance with Rule 65. Thus, the Organization asserts that the Carrier should be required to compensate each Claimant for 31.5 hours at their respective overtime rates of pay for the loss of overtime work opportunities.

Position of the Carrier

The Carrier contends that Rule 57 carves an exception when a specific fact pattern is covered by other negotiated rules of the parties' Agreement, the employee is not entitled to an Unjust Treatment Hearing. The Carrier concurs with the Organization that Rule 10 (Overtime) addresses these circumstances. As such, the Carrier argues that management is not compelled to hold the unjust treatment hearing. The Carrier contends that there is a material dispute of fact, and the Organization has failed to meet its burden of proof. The Carrier requests that the Board issue a denial decision.

After consideration of the arguments of the parties and the record presented, the Board finds that the Organization has failed to meet its burden of proof. Rule 57 provides the right to an unjust hearing if no other rule covers the facts and circumstances. Neither party disputes that Rule 10 covers the facts and circumstances giving rise to this claim. The Board, therefore, finds no contractual violation.

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 19th day of September 2022.