Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD**
THIRD DIVISION

Award No. 44819
Docket No. SG-46444
23-3-NRAB-00003-200639

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation:

Claim on behalf of P.L. Michael, III, for the difference in pay between the time and one half rate and the double time rate of pay for 9 ½ hours, account Carrier violated CSXT Labor Agreement No. 15-018-16, Consolidation of Agreements and Uniform Rule 3 and Section 4, when the Claimant was denied the double time rate of pay for the second rest day, on September 16, 2018, and he was compensated at the time and one half rate of pay. Carrier's File No. 18-76765. General Chairman's File No. C-18-CSX-042-1. BRS File Case No. 16249-CSX(N). 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.

At the times relevant to this claim, Claimant P.L. Michael III was a Signalman assigned to Signal Team 7Z21, which was working a schedule of eight consecutive days followed by six consecutive rest days. The Claimant's gang worked its regular assignment from September 4, 2018, through September 11, 2018, and from September 18, 2018, through September 25, 2018. In addition to the regular scheduled shifts, the Claimant worked the scheduled rest days of September 12 through 17, 2018. The Claimant was paid double time for work on September 13, 2018, and time and one-half for the other rest days.

The Organization submitted the instant claim on November 24, 2018, contending that the Carrier violated Rule 4-B-1 of the May 26, 2016 Consolidation Agreement when it compensated the Claimant at the overtime rate rather than the double time rate for September 16, 2018, when he worked the second rest day of his work week. The claim stated that the Claimant worked all the hours of what is considered two work weeks, as well as all six rest days between the two work cycles. The claim alleged that the first three rest days were associated with the first work week of the compressed schedule, entitling him to double time for the second of those days, and that he worked the next three rest days associated with the second work week of the compressed schedule, entitling him to double time for the second of those days, or the fifth rest day of the six day stretch.

The claim asserted that it was recognized during negotiations of the Consolidation Agreement that some benefits would be reduced if the eight and six schedule would be considered one workweek, so the parties specified that such a schedule is two workweeks. It noted that this applied to travel allowances for each 40-hour workweek, and it argued that the same principle should apply to double time on a second rest day. The claim compared potential double time days under work schedules of five and two, four and three, and eight and six, and it noted that the Carrier's interpretation reduced the potential for double time in September and October 2018 from nine days under the first two schedules, to only four days under the eight and six schedule the Claimant was working, thereby gaining an unintended benefit. The claim sought payment of the difference between the overtime rate and the double time rate for the 9 ½ hours the Claimant worked on September 16, 2018.

The Carrier denied the claim, stating that no violation of the collective bargaining agreement had been established. It relied on the portion of the Consolidation Agreement which addresses establishment of an eight and six schedule, stating that the language was clear regarding the parties' intent regarding the work and rest days of teams on such a schedule. The Carrier also relied on 4-B-1 of the collective bargaining agreement

as limiting double time payment to only the second rest day of an assignment. It stated that the Claimant was only entitled to double time on the second day of his rest day period, regardless of how long that period might be.

The Organization submitted an appeal, stating that prior to the Consolidation Agreement, the Carrier had considered the eight and six schedule to be one week for purposes of travel allowance and entitlements. It asserted that the Carrier's position had resulted in countless disputes, leading to the clarification language in the Consolidation Agreement that such a schedule was indeed two work weeks. It contended that the Carrier was in this case attempting to reduce the value of that negotiated outcome.

The Carrier denied the appeal, again maintaining that no violation of the cited agreement had been established. It stated that the Organization's characterization of the negotiations leading to the Consolidation Agreement were unsupported, and that the Organization had not demonstrated that the agreement had been applied as the Organization asserted was proper. It denied that the six-day rest period was intended to be split, pointing to the language of the agreement that such rest days are "consecutive." It claimed that the fact an employee on a four and three schedule would only receive double time on one day of a three-day rest cycle was support for its position.

The Carrier also asserted that the Organization had previously filed a similar claim requesting double time for a second day, but that the Organization did not progress the claim to arbitration after the claim was denied on the property. It contended that such handling had conclusive impact on the Organization's ability to progress the instant claim.

The parties discussed the matter in conference, maintaining their respective positions. The matter now comes to us for resolution.

The parties' positions before us are essentially the same as those set forth in the on-property handling described above. The Organization maintains its stance that the Carrier improperly denied the Claimant a second day of double time, relying on Section 4(L) of the Consolidation Agreement and its designation of an eight and six work schedule as being two work weeks. It denies that any prior claim handling has any impact on this case, especially since the claim in question arose before the date of the Consolidation Agreement. It states that the language of the Consolidation Agreement is clear and unambiguous, and that the parties intended to treat the eight and six schedule as describe in the claim. The Organization urges that the claim be sustained.

The Carrier, on the other hand, reiterates its contention that no violation of the cited agreement has been established. It states that the plain language of Rule 4-B-1 only requires double time payment on the second rest day of an assignment, regardless of whether the rest days are two, three, or six, and it asserts that the Claimant's second rest day only occurs every other Thursday. The Carrier denies that the definition of "work week" is relevant to the claim in light of the language of Rule 4-B-1. Curiously, the Carrier adds now an argument that the Organization has failed to prove a remedy, as there is "no evidence to prove Claimant could have or would have performed the work" and that he therefore suffered no loss of earnings. The Carrier posits that the Organization has not met its burden of proving an agreement violation, and it concludes that the claim therefore must be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we find that the Organization has established a violation of the cited agreements. The agreements in question provide as follows:

4-B-1

Work performed by an employee on his assigned rest day, or days, shall be paid for at the time and one half rate. Service performed on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under Rule 4-B-2(b) will not be counted as qualifying service under this paragraph nor will it paid for under the revisions hereof.

Consolidation Agreement Section 4(L)

After initial advertisement of positions as provided in each of the five (5) Agreements, Regional Construction Teams/Gangs may, if requested by a majority of the gang members and approved by CSXT management and the General Chairman under the appropriate Agreement, work an alternative schedule of either eight consecutive days on with six consecutive days off for rest (eight and six schedule) or four-ten hour days with three consecutive days off for rest (four tens schedule). An eight and six schedule will begin its first workday on Tuesday and work for eight

> **consecutive days followed by six consecutive rest days. An eight and six schedule is considered to be two workweeks. When requested and approved, the alternate schedule will remain in effect for the duration of the assigned project.**

First, we find no significance to the Organization filing a single claim for an allegedly similar violation and not progressing it to arbitration. As the Organization points out, that claim was filed and denied well before the date of the Consolidation Agreement, which provided additional language confirming that an eight and six schedule is two work weeks. The award cited by the Carrier on this point, with its familiar "Phoenix rising from the ashes" verbiage, is not on point, as that case was addressing yet another claim pertaining to an issue which had already been addressed and rejected in arbitration multiple times. We find no similarity between that case and this one.

Although the Carrier emphasizes the verbiage in Rule 4-B-1 which states that "service performed on the second rest day of his assignment shall be paid at double the basic straight time," we cannot ignore the other relevant provisions of the agreement. The phrase immediately following the one relied on by the Carrier provides "provided he has worked all the hours of his assignment in that work week," and here it is undisputed that the parties agreed that "an eight and six schedule is considered to be two workweeks."

Perhaps if the language emphasized by the Carrier was the only relevant agreement language, we might agree with the Carrier that the plain language works to reduce the number of days on which double time is afforded to employees in the Claimant's position, despite what seems to be a sharp practice in treating employees on an eight and six schedule much differently than those on five and two and, more closely related, four and three schedules, when they work 22 consecutive days. We do not read that language in a vacuum, however, but rather we believe it is appropriate to read the agreements as a whole.

When read together, it appears to us that the parties did not intend to disadvantage employees working on an eight and six schedule. To the contrary, they specifically provided that such a schedule is two workweeks, and 4-B-1 itself qualified payment of double time on an employee having worked all the hours of a single work week. As the Organization notes, without rebuttal, employees on an eight and six schedule are also provided with travel payments as if they were on a standard schedule, which in our view is also consistent with an intent of not to reduce potential payments

to employees on the compressed schedule. Inasmuch as the parties have specifically agreed that the eight and six schedule is considered two workweeks, even though those days are "consecutive," we believe that such language necessarily implies a rest period associated with each of those two workweeks, even though the rest days are likewise observed in a "consecutive" manner. The record reflects that the Claimant worked all of the six rest days after the eight workdays, and we believe he was entitled to payment of double time on two of those days, just as if he had been assigned to a four and three schedule, and he worked all of those days. We find no support for the Carrier's position that the Claimant was unavailable or suffered no loss.

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 21st day of December 2022.