

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44910
Docket No. SG-46983
23-3-NRAB-00003-210651**

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

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

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 T.M. Conrad, for compensation of 8-hours at the Signal Maintainers respective straight-time rate of pay for February 2, 2020; account Carrier violated the current Signalman’s Agreement, particularly Rules 5, 6, and 14, when Carrier assigned the Claimant to work a temporary Signal Maintainer position with a schedule of Sunday–Thursday and rest days on Friday and Saturday, Carrier required the Claimant to report on February 3, 2020, and failed to pay him properly for the workweek, thereby, causing a loss of wages. Carrier’s File No. 1736113. General Chairman’s File No. N0228. BRS File Case No. 16511-UP. NMB Code No. 139.”

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.

The Claimant was assigned to Gang 2695 as a Skilled Signaller in the Carrier's Signal Department, 8 days on, 6 days off. His regular work schedule concluded on January 28, 2020. He was off work on January 29, 30, and 31, and resumed work on Saturday, February 1, 2020.

Manager Parris temporarily assigned the Claimant to Gang 5756, which had a Sunday to Thursday work schedule. The Claimant reported for duty on Gang 5756 on Monday February 3, 2020, instead of the first day of the work week, Sunday. As a result, the Claimant did not work in either assignment on Sunday, February 2.

In a letter dated March 20, 2020, the Organization filed a claim on the Claimant's behalf. The Carrier denied the claim in a letter dated April 28, 2020. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Organization contends that the Carrier violated Rules 5, 6, and 14 of the Agreement when the Carrier assigned the Claimant to a temporary assignment. The Organization contends that the Carrier violated Rule 6 when it directed the Claimant to start his assignment on a Monday rather than the bulletined start day of Sunday. As a result, the Claimant was not able to fulfill a forty-hour work week. Rule 6 states,

The regularly established daily working hours will not be reduced below eight (8) per day, nor will the regularly established number of working days be reduced below five (5) per week, except in weeks in which positions are established or abolished, unless agreed to in writing by a majority of the employees affected through their General Chairman. The number of days may be reduced in a week in which holidays specified in Rule 24 occur, by the number of such holidays.

The Organization contends that this language is clear and unambiguous and reserves to the Organization's members the right to not receive less than the 40-hour threshold. The language should be applied as written.

The Carrier contends that the evidence offered by the Carrier that the Claimant chose not to report until Monday, should be given little weight as the manager admitted that he had little recollection of the situation.

The Organization contends that as a result of this violation, the Carrier should compensate the Claimant for eight hours at the straight time Skilled Signal Maintainers rate of pay for the loss of wages on February 2, 2020, from a violation of

the Agreement.

The Carrier contends that the Organization has failed to meet its burden of proving a violation of the Agreement. The Carrier contends that the Organization has failed to show that the Claimant was instructed to rest on February 2, 2020. The Carrier contends that it presented evidence that the Claimant elected to start his temporary assignment on Monday so that he could have an additional rest day. The Carrier's manager denies that he directed the Claimant not to report before Monday.

The Carrier asserts that the Organization's claim rests on its assertion that but for the manager's instruction, the Claimant would have reported to work on February 2 and received eight hours of pay for that day. But the Carrier has presented evidence refuting this assertion. The Carrier contends that the Board is unable to reconcile this dispute in facts, as the Claimant's statement contradicts the manager's statement.

The Organization bears the burden of proving its case in a rules claim. In that regard, it has presented the Claimant's statement that he was eight hours short, but he does not explain why. The Organization suggests that he started the assignment on Monday at the direction of the temporary manager. The manager's statement is that the Claimant elected to take an extra day of rest and denies that he directed him so.

The Organization urges this Board to find the Claimant's statement to be the more credible of the two. But as an appellate forum, this Board is not able to reconcile the inconsistent statements. And without this evidence, the Organization cannot present a *prima facie* case that the violation occurred. Under such circumstances, the Board must find that the Organization has failed to satisfy its burden of proof, and the claim must be 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 21st day of April 2023.