

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45259  
Docket No. SG-47575  
24-3-NRAB-00003-220253**

**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: (  
(BNSF Railway Corporation**

**STATEMENT OF CLAIM:**

**“Claim on behalf of R. Evans, for 4 hours and 15 minutes at his overtime rate of pay, account Carrier violated the current Signalmen’s Agreement, particularly item 8(B) of side letter 20D (former side letter 101), when Carrier failed to compensate the Claimant for planned work on his rest/vacation day. Carrier’s File No. 35-21- 0006, General Chairman’s File No. 20-107-BNSF-188-SP, BRS File Case No. 5271, NMB Code No. 300 - Contract Rules: Assignments/Bulletins.”**

**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 is assigned as a Signal Maintainer in the Carrier’s Signal Department, working Monday through Friday, 0700 – 1530, with a protect day on Saturday and a rest day on Sunday. The Claimant took a single day of scheduled vacation on Monday, August 24, 2020. On August 24, 2020, the Carrier contacted the Claimant and directed him to report to a job site at 3:15 AM on August 25, 2020. The**

Claimant sought compensation for a minimum day's pay. The Carrier paid the Claimant three hours and 45 minutes for work done between 3:15 AM and 7:00 AM but denied his request for additional compensation.

In a letter dated October 2, 2020, the Organization filed a claim on behalf of the Claimant. The Carrier denied the claim in a letter dated November 19, 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 Side Letter 20D, § 8(b) of the controlling Agreement when it failed to compensate the Claimant properly for work performed on his rest/vacation day. It states, in part:

**8. Travel and Away on Rest Day/Protect Day/Holiday and Training/Meetings**

**b. Away from Headquarter or Home (Mobile)**

Each employee away from the headquarter point when assigned to a headquarter position, or away from home when assigned to a mobile position, at the direction of the Company on a rest day or protect day, will be paid a minimum of a day's pay (ten hours or eight hours, depending on the work schedule) at the overtime rate. Similarly, each such employee will receive a minimum of a day's pay at the double-time rate on holidays, when so held....

The Organization contends that the Carrier should compensate the Claimant for four hours and 15 minutes at his respective overtime rate of pay to make him whole for a minimum day's pay. The Organization contends that the Carrier ended the Claimant's vacation prematurely when it instructed him to report for a planned Maintenance of Way project at 3:15 AM on August 25, 2020, as the Claimant's vacation did not expire until 7:00 AM on that day. The Organization contends that work cannot be completed on a vacation day and once the Claimant reported at 3:15 AM, he was no longer on vacation, and August 24, 2020, became a rest day.

The Organization contends that the Carrier is prohibited from canceling vacation without proper notice. Appendix A-1, Section 5, states, in pertinent part:

Each employee who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employee so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent.

If the Carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation allowance hereinafter provided.

Such an employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

The Organization contends that the controlling Agreement provides that employees must take vacation days in whole day increments. The Claimant was denied his whole day when he was required to report to work at 3:15 am before his regular report time of 7 AM. Since August 24, 2020, became a *de facto* rest day, the Claimant was entitled to the minimum day's pay outlined in Side Letter 20D.

The Carrier contends that it did not violate the controlling Agreement and that the Claimant was properly compensated. The Carrier contends that when the Claimant was required to report early on August 25, 2020, he was compensated at the overtime rate for the three hours and 45 minutes that he reported prior to his shift starting on August 25, 2020. The Carrier contends that the Claimant is not entitled to any additional compensation for this shift.

The Carrier contends that § 8(b) of Side Letter 20D does not provide for compensation for employees utilizing vacation days. The clear language of the cited provision does not apply to the Claimant's circumstances. The Claimant took a vacation day on August 24, 2020, and § 8(b) expressly states that the minimum day pay provision applies when employees are traveling and away on rest days, protect days, holidays, training, or meetings. A vacation day is not included in the list. The Carrier contends that the Claimant does not qualify for the compensation listed in § 8(b). The Carrier contends that the Organization is trying to add language to the controlling Agreement that was not agreed to by the bargainers.

The Carrier contends that the Claimant was properly compensated for a full eight hours on his vacation day of August 24, 2020, and was properly compensated for the overtime hours worked on August 25, 2020.

When the language of the parties' agreement is clear and unambiguous, this Board need look no further than the negotiated language agreed to by the parties to resolve their dispute. Here, the language of § 8(b) applies only to travel and away on rest days, protect days, holidays, trainings, and meetings. The Organization tries to transform the Claimant's vacation day into a "rest day" in order for the provision to apply to his circumstances. But it is clear that the Claimant was using a vacation day on August 24 instead of working his regular shift from 0700 to 1530. And he was properly compensated for the vacation day.

Arbitrators trying to discern the intent of the parties often employ ancient interpretative maxims, such as *expressio unius est exclusio alterius*, "the expression of one thing is the exclusion of another." Where the parties have listed specific examples of when a provision should apply, it is beyond the authority of this Board to expand that list beyond what has been agreed to by the parties. If they had intended § 8(b) to apply to employees who are on vacation, they would have included it. We cannot ignore the parties' intent. We find no violation of the controlling Agreement.

**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 14<sup>th</sup> day of May 2024.