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

Award No. 45359
Docket No. SG-47398
25-3-NRAB-00003-220454

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

STATEMENT OF CLAIM:

"Continuous claim on behalf of J. Lopez, B. Manning, K. Redd, and R. White, for compensation of 2 hours at their respective straight-time rates of pay and 2 hours at their respective overtime rates of pay for each day worked at the altered start time and continuing until the Claimant's start time is returned to 7:00 a.m., account Carrier violated the current Signalmen's Agreement, particularly Rules 7, 10, and 65, beginning on June 22, 2021, Carrier unilaterally changed the Claimant's start time from 7:00 a.m. to 5:00 p.m. for the sole purpose of avoiding overtime, resulting in a loss of wages to the Claimant's. Carrier's File No. 1759808, General Chairman's File No. VGCS-7-10-193, BRS File Case No. 5398, 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.

This dispute arises out of the same project and change of start time discussed in Third Division Award 45355. For reasons discussed in that award finding that the record did not demonstrate the change of start time was "for the purpose of avoiding overtime" under Rule 7, this claim shall 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 19th day of December 2024.

LABOR MEMBER'S DISSENTING OPINION TO
NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION AWARD NOS. 45355, 45356, 45357, 45358, 45359, 45360, 45361

(REFEREE EDWIN H. BENN)

The language of Rule 7 requires proper analysis of probative evidence in determining when a violation has occurred; in this case, the Majority's quick judgement and failure to uphold the language as written give cause for dissent.

This is not a case of first impression and there are varying decisions made by previous Boards concerning the language of Rule 7. Rule 7 provides that start times may be changed with required notice; more pertinent to this case is that Rule 7 prohibits the temporary change of start times to avoid overtime payments. Based on this language, the Board's analysis must factor in what was the causation and result of the start time change. Was there a bona fide need and what was gained by the change. This logic was noted in the Majority's reference to ***Third Division Award No. 40316***.

Carrier's alleged basis for the change was based on statements from its Officials responsible for the change claiming an "operational need" to perform work in the window of 6:00 a.m. to 3:00 p.m. during the day. The record established that the Claimants' advertised hours were 7:00 a.m. to 5:30 p.m. With their regular advertised hours, the Claimants could have completed the work in the designated window of 6:00 a.m. to 3:00 p.m., the only difference created in the change in start time was that the hours before 7:00 a.m. were now paid at the straight-time rate of pay rather than the overtime rate of pay. Moreover, evidence was attached to the initial claim in this record which demonstrated that there was work being done on an overtime basis which was halted after four days. An email was provided which established Carrier's instruction was that there would be no more overtime. ***Third Division Award No. 37975*** (*"Other indicia of motivation might also be compelling – a recent ban on overtime; a passing remark by a Carrier official.")*. This is the exact situation to which the prohibition of Rule 7 applies, this was a change to avoid overtime payment.

Carrier did not provide any probative evidence to show a bona fide basis for the time change, instead it simply says, "operational need". A proper example of analysis in a similar case is provided in ***Thid Division Award No. 22900*** which held:

> "The Question for decision by the Board is whether the change was made for the purpose of avoiding overtime. It is apparent from the record that the signal gang had to work one hour each day after the rail gang completed their work. If the change in hours had not been made the signal gang would have necessarily been paid one hour of overtime each day. The change in hours avoided that payment. Carrier has attributed the change to a possible conflict with the Hours of Service law. However that conflict is only problematical and the avoidance of overtime is the reality."

The Majority found Carrier's unsubstantiated assertion of "operational need" along with the idea that this was a large project to be a bona fide need. Such shallow analysis and low standards effectively render Rule 7, nullified and without meaning. If Carrier schedules a big project, under this Award's logic, it can circumvent and ignore bargained provisions unilaterally. Boards have long recognized that provision are bargained for a reason and have meaning; decisions such as the Majority's in this case serve to erode the foundation of the bargained provisions and counter forces to the purpose for which the dispute resolution machinery was created.

Carrier's controls its operations and held to the bargained provisions, the concept that a large project grants Carrier an exception from providing the employees a bargained benefit ignores the entire concept of the free enterprise system in which Carrier functions. As noted in ***Third Division Award No. 17760:***

> "This logic seems to ignore the fact that in the present free enterprise system it is the Carrier that is expected to bear the risk of loss just as it is expected to reap the benefits of profit.
>
> We can no more require the employe to share the burden of loss with the Carrier, in the absence of a contractual provision, than we can require the Carrier to share the profits with the employes, in the absence of contractual provisions.
>
> ***
>
> The Carrier relief from his extra expense is at the bargaining table not before this Board."

In this case, there was an extra cost in the form of overtime for Carrier to pay during its business in compliance with the agreement it has with the Union. The Majority's decision passes that burden onto the employees and nullifies their bargained benefit, providing relief through arbitration which is to only be gained through negotiation. As such, this Award lacks a foundation based in agreement language or appellate review and should not serve as a precedent in future claims involving similar disputes.

Respectfully submitted,

Brandon Elvey
Labor Member