

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45417
Docket No. SG-47422
25-3-NRAB-00003-220580**

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

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Continuous claim on behalf of S. Avery, for compensation of an additional 8 hours at half-time rate of pay, each Sunday he is forced to work, and 8 hours at his respective straight-time rate of pay for each Friday he denied the work opportunity until returned to his Monday through Friday work week, account Carrier violated the current Signalmen’s Agreement, particularly Rules 5, 38, and 65, when on February 16, 2021, Carrier changed the Claimant’s workweek to Sunday through Thursday with Friday and Saturday rest days, and failed to show an operational need existed to change the assigned workweek. Carrier’s File No. 1754223, General Chairman’s File No. W-5-125, BRS File Case No. 5385, 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.

At the time this dispute arose, the Claimant held a Skilled Signal Maintainer's position headquartered in Oxnard, California.

On February 5, 2021, the Carrier posted Bulletin Z3S53937 for a Skilled Signal Maintainer with Friday and Saturday off days. On February 10, 2021, the Organization protested the bulletin because it was not for a Monday through Friday schedule.

Rule 5 provides, in pertinent part:

"RULE 5 – 40-HOUR WORKWEEK"

NOTE: The expressions "positions" and "work" used in Rule 5 refer to service, duties or operations necessary to be performed the specified number of days per week and not to the work week of individual employees.

GENERAL

There is established for all employees, subject to the exceptions contained in this agreement, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the Carrier's operational requirements, so far as practicable the days off will be Saturday and Sunday. The foregoing work week rule is subject to the provisions which follow:

A. Five-Day Positions

On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

* * *

E. Deviation from Monday-Friday Week

If in positions or work extending over a period of five days per week, an operational problem arises which the carrier contends cannot be met under the provisions of Section A of this Rule, and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, and if the parties fail to agree thereon, then if the carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under the agreement.”

Per the posting, the Claimant worked a schedule other than Monday through Friday.

In its letter dated April 26, 2021, the Carrier asserts that there was a need for positions to provide maintenance coverage on Saturdays and Sundays due to the number of trains and the amount of work in the area and “the need to have people around 7 days a week to get all the maintenance performed, testing completed, and to have coverage for issues that arise on the territory.”

In its letter dated June 1, 2021, the Organization states that on April 16, 2021, the position was posted back to a schedule consistent with the Agreement, but for the period February 16, 2021 to April 16, 2021, the Carrier provided no proof of an operational need to allow for a schedule different from a Monday through Friday schedule.

In its July 12, 2021 letter, the Carrier asserted:

“... According to Carrier Management, the Carrier had need for positions to provide maintenance coverage on Saturdays and/or Sundays. Calls for service were going unanswered, or response time to call outs were taking a significant amount of time leaving dangerous situations in various states of disrepair. With the number of trains and the amount of work in the area, there was a need to have coverage 7 days a week to get all the maintenance preformed, testing completed, and to have coverage for issues that arise on the territory.”

The record contains a February 26, 2021 letter from the Carrier’s Manager Signal Maintenance which gives a “couple crossing calls tickets that we have

experienced recently on weekend around Oxnard”. The letter detailed a call at MP 417.79 on Saturday February 14, 2021 where local maintainers were three to five hours away “however all three local guys couldn’t take the call [and] we tried dispatching other employees off the district, and we contacted 5 employees before we got one who was willing to take the call out of Oakland,” which required a six-hour drive one way, amounting to 13 hours of overtime. Another example given was a call on February 21, 2021 where dispatch was attempted for two local employees who could not take the call and attempts to dispatch from the district and “we had no luck for a few hours.”

The case authority on this issue is well developed. See e.g., Third Division Awards 40609 [cited by the Carrier] and 37049 [cited by the Organization] with further authority cited in those awards. Stated simply, the awards hold that the type of language found in Rule 5 amounts to “a rebuttable presumption” for five-day work weeks, with Saturdays and Sundays off.

The question in each case is whether the presumption has been rebutted? To answer that question, the facts in each case must be examined.

For example, in Third Division Award 40609, the presumption for the Monday through Friday schedule was rebutted because the evidence showed:

“... (1) the enormous volume of train traffic in the area going through the North Platte rail yard causing a significant number of maintenance issues (2500 within an eight month period, 32% of which occurred on the weekend) (2) the addition of 116 retarders to handle the increase in approximately 71,000 cars during the 2003-2006 period (3) that the IR was needed to work with the RYM who was scheduled to work on Saturdays without objection and (4) that this is a 24/7 operation requiring prompt maintenance to minimize train delays The Carrier also posits that it was having trouble keeping Signal Maintainers available on weekends to cover these trouble calls, necessitating scheduling Saturday coverage to perform the required seven day per week maintenance service.

A careful review of the record convinces the Board that the Carrier met its burden of showing an operational need for the change in rest days occurring in this case. ...”

But in Third Division Award 37049, the Board concluded “... [a]side from rhetoric, there is insufficient probative evidence in this record to support the Carrier’s insistence that the challenged workweek/rest days change was necessitated by ‘material operational changes.’”

Turning to this case, while labeled as examples (perhaps implying that there are more), there are only two specific instances cited by the Carrier to support its position that operational requirements allowed it to change to a work schedule other than Monday through Friday – the Carrier’s February 26, 2021 letter from the Carrier’s Manager Signal Maintenance which gives a “couple crossing calls tickets that we have experienced recently on weekend around Oxnard”.

As the Organization argues, two specific examples cited by the Carrier are not enough to rebut the presumption of a Monday through Friday workweek to establish the operational need to change the Monday through Friday schedules.

The claim shall therefore be sustained. For the days on which the Claimant worked a schedule different from a Monday through Friday schedule, the Claimant shall be made whole as if he worked a Monday through Friday schedule with appropriate differences paid for overtime.

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 13th day of February 2025.