Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 34045
Docket No. SG-34558
00-3-98-3-202

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (Conrail):

Claim on behalf of G.T. Sindelir for payment of 12 hours at the straight time rate, account Carrier violated the current Signalmen's Agreement, particularly the Vacation agreement, when it distributed more than 25 percent of the workload of a vacationing employee to the Claimant on August 5 and 6, 1996, without assigning a relief employee. Carrier's File No. SG-929. General Chairman's File No. RM2920-52-197. BRS File Case No. 10555-CR."

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.

A Maintainer was observing a one-week vacation on August 5-9, 1996. The Organization contends that the Claimant, a regularly assigned Maintainer, was assigned on August 5-6, 1996 (16 hours) to perform work regularly assigned to the vacationing Maintainer. The Organization argues that this is in violation of Article 10(b) of the National Vacation Agreement, which reads as follows:

> "10(b) Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five per cent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official."

As a procedural matter, the Carrier states that information concerning the work performed by the Claimant was submitted after the Carrier's final declination following conference and that such information may not be considered by the Board. Specifically, the Senior Director's reply was dated July 3, 1997; the Organization provided additional information in letters dated January 14 and February 6, 1998; and the Organization's Notice of Intent to bring the matter to the Board was dated April 1, 1998.

This same argument was presented by the Carrier in the matter reviewed in Third Division Award 33998. The Board found therein that submission of further information prior to the Notice of Intent is permissible, and this finding is incorporated herein by reference. Further, the Carrier on February 19, 1998 noted that no new information had been provided and that such additional material violated the Provision of Rule 4-K-1. Notice of Intent to this Board was made on April 1, 1998.

The Carrier also argues that the matter should have been referred not to the Board but to the procedure outlined in Article 14 of the National Non-Ops Vacation Agreement of 1941 for "interpretation or application." Again, the Board does not agree. In the matter here under review, the meaning of Article 10(b) is not an issue; involved here is simply a factual dispute as to the event leading to the claim.

The Organization states, without contradiction, that the Claimant was assigned to work for the two days in question on territory covered by the vacationing employee, rather than on his own territory. Because the 16 hours represent in excess of 25% of the

40 hours assigned each week to the vacationing employee, a violation of Article 10(b) has been amply demonstrated. The remedy of 16 hours' straight time pay to the Claimant is appropriate.

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 25th day of May, 2000.