

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26522
Docket Number MW-26722

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, beginning March 5, 1984, it scheduled Mr. A. N. Plant to work ten (10) hours per day, four (4) days per week without allowing him three (3) consecutive rest days in each work week (System File NEC-BMWE-SD-941).

(2) As a consequence of the aforesaid violation, Mr. A. N. Plant shall be allowed ten (10) hours of pay at his respective time and one-half rate for each rest day lost beginning March 10, 1984 and continuing until the violation is corrected."

OPINION OF BOARD: On March 25, 1984, a Claim was filed with the Carrier on the grounds that it was in violation of the AMTRAK-BMWE Agreement and the Special Construction Gangs Agreement of November 3, 1976, when it failed to pay the Claimant at overtime rate on various rest days which he was required to work in March of 1984 and thereafter.

The Rules at bar are the following:

"Rule 40

BEGINNING OF THE WORK WEEK

The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven consecutive days, starting with Monday."

"Rule 45

TIME WORKED IN EXCESS OF 40 STRAIGHT TIME HOURS
IN ANY WORK WEEK

Time worked in excess of 40 straight time hours in any work week, shall be paid at time and one-half rates, except where such work is

Claim is for time and one-half for **March** LO, 11 and 23, 1984, and any days thereafter for which the Claimant was paid pro rata for being required to work on rest days. After the Claim was filed the Carrier determined, by correspondence dated **July 19**, 1984 and thereafter to the Organization that it had made a mistake when it paid the Claimant time and one-half on March LO, 1984. The Carrier stated that it was taking measures to recoup such overpayment.

The record shows that the Carrier is inconsistent, when it handled this case on property, relative to its understanding of when the new work week to which the Claimant was assigned, actually began. The Senior Director-Track informed the Organization by correspondence dated May 24, 1984, that the change of schedule became effective "**...March 10**, 1984." The Assistant Chief Engineer, on the other hand, states that the new work week was to begin on "**...March 5**, 1984." Despite this anomaly in the record before the Board the record does show that the Claimant was not given three rest days after his March 5-8, 1984 work week, and that he was not given three rest days after his March 17-20, 1984 work week. He was worked on March 10, March 11 and March 23, 1984, and was paid pro rata for those days (if, in fact, his March LO, 1984, overtime rate was rescinded). The Carrier was in error when it paid the Claimant pro rata on those dates. The reason for this has been clearly **out-**Lined by the Board in Third Division Awards 26518 and 26519 and the reasoning used there applies here by reference.

Since the Agreements were violated, the Claimant shall be paid the difference between the overtime and pro rata rates for March 10-11, and 23, 1984, if, in fact, his overtime rate had been reduced to pro rata for March LO, 1984. The parties are directed to do a joint check of the Carrier's records after these dates. If there are additional work weeks when the Claimant worked four, ten hour days followed by any three rest days on which he was obligated to work, and if he was not paid the overtime rate on these rest days, the Claimant shall be compensated accordingly at the difference between the overtime and pro rata rates.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

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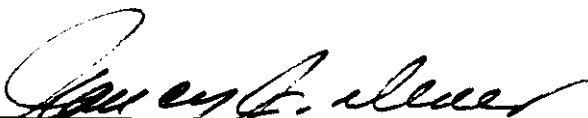
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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.

CARRIER MEMBERS' DISSENT
TO
AWARDS 26518, 26519, 26522 & 26523
DOCKET NOS. MW-26667, MW-26672, MW-26722 & MW-26724
(Referee Suntrup)

In sustaining these claims, the Majority failed to accord sufficient weight to the fact that the November 3, 1976 Special Construction Gangs Agreement was specifically negotiated to grant the Carrier flexibility in changing workweeks to meet the unique operationa' requirement5 of it5 mechanized gangs and, in consideration for such flexibility, an incentive rate of 25¢ per hour over and above the rate provided for the classification was granted.

We dissent.

Michael C. Lesnik

M. C. Lesnik

M. W. Fingerhut

M. W. Fingerhut

Robert L. Hicks

R. L. Hicks

P. V. Varga

P. V. Varga

James E. Yost

J. E. Yost