NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26523
THIRD DIVISION Docket Number KW-26724

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 12, 1984, it scheduled P.R.S. unit employes A. Cunha, E. Dickson and C. McIntosh to work ten (10) hours par day, four (4) days par week without allowing them three (3) consecutive rest days in each work week (System File NEC-BMWE-SD-937).

(2) As a consequence of the aforesaid violation, Messrs. Cunha, Dickson and McIntosh shall be compensated thusly:

> 'the 17th and 18th of March should have bee" rest days ; therefore, the claimants should be compensated at time and a half for both of these days. In addition, the claimants were only provided then with a 20 hour work week, rather than a forty hour work week; therefore, the claimants and the Organization are requesting a" additional 20 hours at the straight time rate for each of the above-mentioned claimants.'"

OPINION OF BOARD: On April 2, 1984, the Vice Chairperson of the Organization filed a Claim 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 Claimants at the overtime rate on various days in March of 1984.

The original Claim filed on April 2, 1984 errs in its calculation of relief requested under the Agreements at bar. This is later corrected. The calculation error in the original Claim does not nullify, in the mind of the Board, the validity of the Claim. See Third Division Awards 20841 and 25061 for resolution of comparable issues.

The Rules at bar are the following:

"Rule 40. BEGINNING OF THE WORK WEEK

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

"Rule 45. TIME WORKED IN EXCESS OF 40 STRAIGHT TIME HOURS OF 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 performed by an employe due to moving from one assignment to another, or where days off are being accumulated in accordance with the provisions of Rule 39."

RULE 90-A

TRACK UNITS - SOUTHERN DISTRICT

V. WORK WEEK.

The normal work week for employes assigned to positions in units established pursuant to this Agreement, will consist of five (5) days of eight (8) straight time hours each, with two (2) consecutive rest days. An original determination of whether a unit is to be established for five (5) or four (4) ten (10) hour work days with three (3) consecutive rest days shall be made in the notice given to the General Chairman pursuant to II above. When it is known in advance that a five (5) day week will not be practicable and feasible for the duration of the unit, those times will be specified in such notice. At all other times, the Chief Engineer may change the work week from five (5) days to four (4) days, or vice versa, upon at least five (5) days written notice to the involved employes and the General Chairman, except that such changes may be made in less than five (5) days upon concurrence of the General Chairman.

"SPECIAL CONSTRUCTION GANGS AGREEMENT (November 3, 1976) Paragraph l(d)

"A work week consisting of four ten-hour work days may be established with any three consecutive days as rest days."

The Claimants were members of the Panel Renewal System which is a District Unit subject to the provisions of Rule 90-A of the operant Agreement and the Special Construction Gangs Agreement of November 3, 1976. The Claim stems from a memo distributed to the Claimants on February 29, 1984, advising them of a change in work schedule and of notification of same by the Equipment Engineer on March 8, 1984. Upon denying the Claim the Assistant Chief Engineer, in correspondence to the Organization dated July 16, 1984, stated the following:

"Upon reviewing the aforementioned claim we can find no basis on which to honor the request for compensation here, in that the Claimants' tour of duty was changed in accordance with the applicable rules of the Agreement and they were properly compensated for all time worked."

As a result of a change in the work schedule the record shows that the Claimants worked on the following days. They were paid March 12-15, 1984 at the pro rata rate. March 16, 1984, was a rest day. March 17, 1984 was a work day on which they were paid overtime. On March 18, 1984 they were paid the pro rata rate.

This enumeration of the facts of this case must include the qualifier that two of the Claimants were absent on two days during this time frame as a result of voluntary absences. This will ultimately affect their relief requested in the instant Claims as is noted later in this Award. As far as can be determined from the record, particularly Carrier's June 1, 1984 letter in combination with the Organization's submission, Claimant Dickson was paid the proper amount of compensation on the combined dates of March 17-18, 1984, when he was called to work on his normal rest days but his pro rata and overtime rates were paid in reverse chronological order. If this Claimant was not paid at the pro rata rate on March 17, 1984, and at the overtime rate on March 18, 1984, he should have been since he had not completed a forty-hour work week until the end of the shift on March 17, 1984. Nothing in the Carrier's on-property correspondence relative to this case, nor in its submission nor rebuttal to this Board refutes such conclusion.

According to the applicable Agreements the Board notes that March 18, 1984 was a scheduled rest day. If the Claimants were not given that day off they should have been paid at the overtime rate, under normal conditions, if called in on assignment, and if they had actually worked that day. The Board has already ruled on a number of cases between these same parties wherein the contract provisions are the same but the details of each Claim are different (See Third Division Awards 26519 and 26522). The reasoning by the Board in those cases, outlined in detail in Third Division Award 26518, applies here by reference. The Organization has sufficiently met its burden of proof and the Claim is sustained on merits.

Claimant A. Cunha shall be paid the difference between the pro rata and overtime rate for the work he did on March 18, 1984. This amounts to five hours pro rata. Neither Claimants E. Dickson nor C. McIntosh are entitled to relief by this Award. Mr. Dickson had not worked a 40-hour week the prior week since he was absent from his assignment on March 13, 1984; Mr. McIntosh did not work on March 18, 1984.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

A W A R D

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' requirements of its mechanized gangs and, in consideration for sucn 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