

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27751  
Docket No. MW-26876  
89-3-85-3-651

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(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 it compensated Messrs. G. Young, D. F. Williams, W. Patton, W. G. Crook, W. L. Williams, A. Cunha, E. T. Dickson and G. C. McIntosh at the straight time rate instead of the time and one-half rate for the ten (10) hours of work they each performed on the Panel Renewal System on both March 11 and 23, 1984 (System File NEC-BMWE-SD-1049).

(2) As a consequence of the afore-said violation, Claimants G. Young, D. F. Williams, W. Patton, W. G. Crook, W. L. Williams, A. Cunha, E. T. Dickson and G. C. McIntosh shall each be allowed the difference between their respective straight time and time and one-half rates of pay for twenty (20) hours."

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

Claimants in this case were all regularly assigned to the Panel Renewal System Unit at the time of the instant dispute. When this unit was established, employees assigned thereto worked ten hours per day, Monday through Thursday, with Friday, Saturday and Sunday as designated rest days.

On February 29, 1984, Carrier issued a new work schedule for the PRS Unit which, according to the Organization, required Claimants to work as follows:

| <u>Date</u>         | <u>Work Schedule</u> | <u>Rate of Pay</u> |
|---------------------|----------------------|--------------------|
| March 5, Monday     | work 10 hours        | straight time      |
| March 6, Tuesday    | work 10 hours        | straight time      |
| March 7, Wednesday  | work 10 hours        | straight time      |
| March 8, Thursday   | work 10 hours        | straight time      |
| March 9, Friday     | rest day             | - -                |
| March 10, Saturday  | work 10 hours        | time and one-half  |
| March 11, Sunday    | work 10 hours        | straight time      |
| March 12, Monday    | work 10 hours        | straight time      |
| March 13, Tuesday   | work 10 hours        | straight time      |
| March 14, Wednesday | rest day             | - -                |
| March 15, Thursday  | rest day             | - -                |
| March 16, Friday    | rest day             | - -                |
| March 17, Saturday  | work 10 hours        | straight time      |
| March 18, Sunday    | work 10 hours        | straight time      |
| March 19, Monday    | work 10 hours        | straight time      |
| March 20, Tuesday   | work 10 hours        | straight time      |
| March 21, Wednesday | rest day             | - -                |
| March 22, Thursday  | rest day             | - -                |
| March 23, Friday    | work 10 hours        | straight time"     |

The Organization maintains that Claimants are entitled to pay at their time and one-half rate for the work they were scheduled to perform on Sunday, March 11 and Friday, March 23, 1984. We agree with the Organization's position, in part. The relevant rules are as follows:

"RULE 40

BEGINNING OF 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 90-A

TRACK UNITS - SOUTHERN DISTRICT

V. WORK WEEK

The normal work week for employees 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 employees and the General Chairman, except that such changes may be made in less than five (5) days upon concurrence of the General Chairman.

PARAGRAPH 1(D):

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

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 performed by an employee due to moving from one assignment to another, or where days off are being accumulated in accordance with the provisions of Rule 39."

From the above-quoted rules, it is clear that the Carrier was allowed to establish a workweek consisting of four (4) ten (10) hour workdays followed by three (3) rest days. It is also not disputed, in this particular claim, that the Carrier was permitted to change the rest days of the Claimants' assignments. However, it is also clear that a "workweek" is defined as a seven (7) day period beginning on the first day on which a particular assignment is bulletined to work and consists of a specific number of workdays followed by a specified number of rest days. In this case the Claimants were initially assigned to positions with assigned workdays of Monday through Thursday with Friday, Saturday and Sunday designated as rest days. Hence, when the Claimants began their workweek on Monday, March 5, 1984, they were entitled to complete that workweek, including the observation of the designated rest days, i.e., Friday, Saturday and Sunday, March 10, 11, and 12, 1984, respectively. The same principle applied to each of the successive workweeks in March as the Carrier changed the Claimants' assignments. When the Carrier required the Claimants to work on any of the three (3) rest days following each forty (40) hour workweek assignment, they were entitled to receive compensation at the overtime rate for the work performed on those days.

Our conclusions in this regard are bolstered by a series of Awards decided by this Board, all involving claims similar to the one herein. Illustrative of those cases is Third Division Award 26518, in which the Board stated:

"A review of the record before the Board warrants the conclusion that the Carrier is in error in the manner in which it is interpreting the operant Agreement and the Special Construction Gangs Agreement. Rule 40 unambiguously defines a 'work week' as one beginning on the first day on which an assignment is bulletined to work. Paragraph 1(d) of the Special Construction Gangs Agreement clearly states that such work week can consist of 4 ten-hour work days with any 3 '...consecutive days as rest days.' Rule 90(a) permits the same type of arrangement. The Carrier effectively bulletined 4 day work weeks. Rule 45 states that time worked in excess of 40 straight time hours in any work week will be paid at the time and one-half rate. Nothing in Rule 32 nullifies the mandates found in the Rules cited in the foregoing. Further, this latter Rule provides that the guidance found therein shall hold '...(e)xcept as otherwise provided in this Agreement....' The burden of proof has sufficiently been met by the Organization as moving party in the instant case."

Also see Third Division Awards 26519, 26522, and 26523.

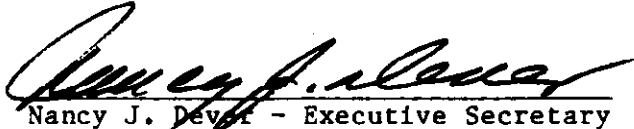
Based on the foregoing, we conclude that Carrier erred in its application of the schedule Agreements. However, the record stands unrefuted on the property that in spite of the February 29, 1984 PRS schedule, payroll records revealed that none of the Claimants performed service on March 11, 1984, and Claimant Crook was on vacation that day. In addition, Claimant Young took a voluntary absence on March 23, 1984. Therefore, Claimants, with the exception of Claimant Young, shall be paid the difference between the overtime and pro rata rates only on March 23, 1984.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.