

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32151  
Docket No. MW-31388  
97-3-93-3-385**

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

**(Brotherhood of Maintenance of Way Employees  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company (former Missouri  
( Pacific Railroad)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Agreement was violated when the Carrier changed the regularly assigned work week schedule of Gang 9332 from ten (10) hours per day, four (4) days per week (Monday through Thursday with Fridays, Saturdays and Sundays designated as rest days) to compressed monthly halves [eight (8) continuous days at straight time pay with the following seven (7) days designated as rest days] (Carrier's File 920386 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Foreman R. L. Ellison, Bridgemen Welders L. D. Adams, M. S. Earll, B. T. Donnelly and Bridgeman Truck Drivers J. A. Hedges shall each be compensated ‘\*\*\* in the amount of ten (10) hours per day at the straight time rate of pay for February 24, 25, 26, 27, and March 9, 10, 11, 12, 24, 25, 26, 30, and 31, 1992. Also the difference between straight time and overtime for all hours worked per Claimant for February 16, 21, 22, and March 1, 6, 7, 8, 20, 21, and 22, 1992.’”**

**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.

In early 1992 the Carrier required repairs to its double track Kansas River bridge in its Kansas City Terminal. Because of track use requirements, an expeditious repair schedule was necessary. To this end, Bridge Managers held meetings with employees assigned to six Bridge Gangs. After discussion, it was determined to proceed on a Consecutive Compressed Half schedule, involving eight consecutive workdays followed by seven rest days. The schedule was in effect from February 16 to March 31, 1992.

Such schedule is covered in a June 1, 1991 Memorandum of Agreement, which reads in pertinent part as follows:

**"Section 5. WORK WEEK:** The work week of a System Bridge Gang will be established in accordance with Rule 14 of the Agreement. However, when a majority of the employees on a gang are in agreement and the Manager concurs a Four Ten Hour Day Work Week or a Consecutive Compressed Half work arrangement may be established in accordance with other Memorandum contained in the Collective Bargaining Agreement."

Gang 9332 was one of the six involved Bridge Gangs. Gang 9332 had been on a four-day, ten-hour schedule. The Gang consisted of a Foreman, three Bridgemen Welders and a Bridgeman Truck Driver. To confirm employees' consent to the change to the Consecutive Compressed Half schedule, undated memoranda were distributed to the Gangs. (The Organization, in its claim, contends that the memoranda were distributed on March 1, 1992.) The memorandum to Gang 9332 read as follows:

"The following employees of Gang 9332 have agreed to work compressed halves while working on Bridge 1.57 on the Kansas City

**Subdivision as discussed and outlined on calendar with G. L. Hester. Compressed halves will begin on February 16th and end on March 31st, 1992."**

**The record shows that this memorandum was signed by the Gang's Foreman and one Bridgeman Welder. It was not signed by the other three employees assigned to Gang 9332.**

**On April 13, 1992 the Organization initiated a claim on behalf of all five employees assigned to Gang 9332, pointing out that a majority of the gang members had not agreed to the new schedule and thus the Carrier was in violation of Section 5 of the June 1, 1991 Memorandum of Agreement.**

**The Carrier responded by pointing out that all Bridge Gang members were at the February 6, 1992 explanatory meeting; that all other Gangs worked on the compressed schedule without protest; that Gang 9332 had worked on a compressed schedule in previous years; and that the Gang Foreman had reported talking with Gang members after the February 6 meeting, with "Everyone [agreeing] on the change but with hesitation."**

**Section 5 of the June 1, 1991 Memorandum of Agreement, quoted above, in unambiguously worded and readily understandable. First, it specifically applies to the "employees of a gang" [emphasis added] and not to an entire working group, such as the six gangs here assigned to the bridge repair. Second, it provides that certain schedules "may be established" but only when:**

**"... a majority of the employees on a gang are in agreement and the Manager concurs."**

**For whatever reasons this may have been adopted by joint agreement of the parties, Section 5 specifically makes the introduction of a Consecutive Compressed Half work arrangement subject to the "agreement" of a majority of the "employees on a gang."**

**Absent the memoranda distributed to the Bridge Gangs after the new schedule had commenced, there might well have been a credibility question as to whether all Gang 9332 members had in fact assented. The assertion by the Foreman that**

"everyone" had agreed is insufficient to resolve the matter. The memoranda, however, convincingly indicates to the Board that the Carrier was seeking to confirm such agreement. For Gang 9332, only two employees signed, less than a majority. Given the unusual circumstances of joint decision making as to appropriate schedules, the Board must uphold the claim that the Carrier was in violation of Section 5 in the absence of agreement by a majority of the employees.

As to remedy, the Carrier contends that the Organization "held back" in its claim by not initiating it until April 13, 1992, thus creating a greater potential liability for the Carrier. (There is no indication that the Organization exceeded a contractual time limit.) The Board finds this argument without significance. When the Carrier received (presumably on or about March 1) the memorandum from Gang 9332 members, it knew then that a majority of the Gang members had not agreed. Further, liability, if any, ceased on March 31, and the initiation of the claim 13 days later did nothing to increase such liability.

The claim seeks pay for all five Gang members, despite the fact that the Foreman and one other employee had indicated their consent of the proposed schedule. There can be no finding that these two employees suffered any loss, and thus the claim in reference to them is denied. (In fact, the Foreman indicated that he did not wish to be associated with the claim.)

As to the other three Claimants, the Carrier's violation of Section 5 warrants a remedy, but not one as expansive as that proposed by the Organization. The Award will find that these three Claimants shall be reimbursed for the difference, if any, between the pay (straight-time and premium) they would have received from February 16 through March 31, 1992 if they had remained on their regular ten-hour, four-day-a-week schedule and the pay (straight-time and premium) they actually received for the same period under the Consecutive Compressed Half work arrangement.

### **AWARD**

**Claim sustained in accordance with the Findings.**

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**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 August 1997.**