

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32747
Docket No. MW-30728
98-3-92-3-526

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

PARTIES TO DISPUTE: (**Brotherhood of Maintenance of Way Employes**
(**Consolidated Rail Corporation**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier changed Messrs. R. A. Bennett, J. E. Rhodes, D. E. McGowan, A. B. Pence, K. C. Hager and C. E. Logan's assigned four (4) day workweek (Monday through Thursday) to a five (5) day workweek (Monday through Friday) without proper notification to the General Chairman (System Docket MW-1956).**
- (2) As a consequence of the violation referred to in Part (1) above, Messrs. R. A. Bennett, J. E. Rhodes, D. E. McGowan, A. B. Pence, K. C. Hager and C. E. Logan shall each be allowed an additional two (2) hours' pay for each Monday, Tuesday, Wednesday and Thursday at their respective straight time rates of pay and they shall each be allowed eight (8) hours' pay for each Friday of the assigned workweek at their respective overtime rates of pay, beginning January 2, 1990 and continuing until the violation is corrected."**

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.

Rule 10(i) provides:

"RULE 10 - 40 HOUR WORK WEEK

* * *

(i) The work week of gangs assigned to Divisional or Inter-Regional Units may consist of four (4) days of ten (10) straight time hours each, with rest days of Friday, Saturday and Sunday.

In the event the work week is changed to a five (5) day basis, or vice versa, for any such gang, the General Chairman shall be given at least five (5) days written notice thereof by the Chief Engineer MW or the Chief Regional Engineer, except that such changes may be made in less than five (5) days upon concurrence of the General Chairman."

By the Carrier's notice dated December 21, 1990, the General and District Chairmen were notified that "Effective January 2, 1991, A&I Gangs, Cold Springs Ohio, listed below will be changed from four - 10 hour days to five - 8 hour days, hours 7:30 a.m. to 4:00 p.m., rest days - Sat. & Sun." On the property, the Carrier stated that the December 21, 1990 notification "was issued by Timekeeping personnel. . . ." After the change of days, the employees continued to work 40 hour weeks.

The Organization has demonstrated a violation of Rule 10(i). While the notification to the Organization occurred more than five days before the change of days as required by the Rule, the Rule nevertheless requires that notice of change of days must come from "the Chief Engineer MW or the Chief Regional Engineer." Here, the notice "was issued by Timekeeping personnel. . . ." and not by the designated Engineers.

To not find a violation of the Rule would be tantamount to our changing the language of the negotiated Rule. The parties constructed the Rule. We have no authority to change their negotiated terms.

But the violation is, at best, a technical one. There is no demonstration that anyone was prejudiced by the fact that the notice "was issued by Timekeeping personnel" rather than the designated Engineers specified in the Rule. The employees continued to work 40 hours per week and the Organization was aware of the change of days more than five days before the change occurred as the Rule requires. For a remedy, we shall direct the Carrier to comply with the Rule. However, we shall deny all requests for any other kind of affirmative relief.

To the very limited extent set forth above, we shall sustain the claim in part.

AWARD

Claim sustained in accordance with the Findings.

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 23rd day of September 1998.