

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36593
Docket No. MW-35742
03-3-99-3-722

The Third Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, effective May 17, 1998, the Carrier changed the work week of Eastern District Tie Gang 9164 from ten (10) hours per day, four (4) days per week (Monday through Thursday) to eight (8) hours per day, five (5) days per week (Sunday through Thursday) without serving a fifteen (15) day notice (System File MW-98-174/1151580 MPR).
- (2) As a consequence of the violation referred to in part (1) above, the Claimants* listed below shall now each be compensated '... for eight (8) hours each at their respective half rate of pay for May 17, 1998, account Carrier failed to give proper notification of changing work week.'

*S. Redix
A. R. Bennett
D. R. Williams
L. Barnes
A. Murphy
E. Jackson
L. L. Sullivan
M. Martin
S. Williams, Jr.
J. H. Beck
L. McDaniel, Jr.
V. Suell
T. L. Reed
D. Murphy

L. J. Holman
F. Payne
E. E. Blake
E. L. Bennett
D. E. Zimmerman
R. L. Strickland
T. Perry
D. L. Haynes
F. Piedra
J. B. Henry
L. Perry
L. W. Curry
B. N. Jones
F. Christopher"

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.

The Claimants held regular assignments on Eastern District Tie Gang 9164. The gang worked under the supervision of Supervisor T. W. Epperson. Prior to May 17, 1998, the gang was working ten hours a day, four days a week with Friday, Saturday and Sunday as their rest days. Paragraph 1 of the August 7, 1974 Memorandum Agreement on the former Missouri Pacific Railroad Company allowed for this schedule.

On Tuesday, May 12 Supervisor Epperson advised the gang that effective Sunday, May 17, 1998, their workweek was being changed to eight hours per day five days a week with Friday and Saturday as their rest days. Paragraph 9 of the August 7, 1974 Memorandum Agreement allowed the Carrier to terminate the four day workweek established pursuant to Paragraph 1 provided the gang was served a 15-day notice.

On July 7, 1998, the Organization submitted a claim and grievance on behalf of the members of Eastern District Tie Gang 9164 for eight hours each at their respective half rate of pay for May 17, 1998, account they were not served a 15-day notice that their four day workweek was being terminated. According to the Organization, they were only served five days' notice.

The Carrier denied the claim and grievance contending that as early as January 1998, Eastern District Tie Gang 9164 was specifically told that when the gang reached the Chicago Sub their four day workweek would end. The Carrier asserts that each month this would be repeated to the gang. It was also reiterated whenever a new manager showed up on the gang, according to the Carrier.

On October 22, 1998, the Organization appealed the claim and grievance amending it to a claim for 30 minutes at each gang members' respective rate of pay for May 17, 1998. The Carrier denied the claim and it was subsequently progressed to this Board.

The Board recognizes that Paragraph 9 of the August 7, 1974 Memorandum Agreement does not require the Carrier to serve the requisite 15-day notice in writing. However, there must be some specificity in the notice. At a minimum, a gang must be given a specific date on which their four day workweek would terminate. Advising gang members that their four day workweek would terminate "when the gang reached the Chicago sub" does not satisfy the 15-day notice requirement of the Memorandum Agreement, in the Board's opinion.

Inasmuch as the Claimants were not served a specific 15-day notice that their four day workweek would terminate on May 17, 1998, the claim as amended on October 22, 1998, must be sustained.

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 16th day of June 2003.