

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 37000  
Docket No. MW-36467  
04-3-00-3-736

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 the Carrier changed the work week of Southern Tie Gang 9167 from a Monday through Thursday [four (4) days of ten (10) hours] work week to a Monday through Friday [five (5) days of eight (8) hours] work week beginning on September 13, 1999 without the required fifteen (15) day notice (System File MW-00-13/1210856 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants\* listed below shall now be compensated for eight (8) hours' pay at their respective time and one-half rates of pay.

*A. Campbell	J. C. Castille	H. J. Parker
R. E. Young	W. T. Thibodeaux	H. Jackson
F. M. Ortiz	A. M. Marquez	R. Cadena
D. A. Alonso	G. A. Curtis	E. S. Garcia
A. J. Gobert	A. J. Jack	R. G. Casanova, Jr.
J. T. Bergeron	S. B. Reed	J. W. Myers
H. J. Singleton	D. L. DeLaCerde	H. Demouchet
S. Smith, Jr.	C. E. Nash	P. Griffin
W. P. Menard	J. M. Lewis	W. J. Batiste, Sr.
F. D. Averitt	R. Thompson, Jr.	G. E. Obannon
E. G. Johnson	K. G. Kelso	L. C. Fisher

J. Castro	J. H. Robb, Jr.	B. D. Harris
J. L. Ealoms	Z. Hackett	S. B. Bazile
R. J. Richard	J. Brown	R. P. Boney
K. W. Mallett	E. C. Williams	W. S. Alexander
W. J. Nelson	W. C. Taylor	L. E. Ziegler
R. A. Leleux	N. W. Sinegal, Jr.	W. L. Cunningham
G. Almeida	J. A. Bob, Sr.	G. M. Housos
D. Joubert	M. A. Ritter	O. Hennigan, Jr.
J. J. Esquivel, Jr.	J. B. Garcia"	

**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.

This claim alleges that the Carrier violated the 15-day notice requirement contained in paragraph 9 of the August 7, 1974 Memorandum of Agreement (MOA) when Supervisor Early verbally notified Southern District Tie Gang 9167 on September 6, 1999 that their workweek was being changed from a 4 day/10 hours per day schedule to a 5 day/8 hours per day schedule effective September 13, 1999. The record reflects that the Claimants did not miss their rest days on September 10, 11 and 12, 1999 and worked and were paid for a 40 hour week commencing September 13, 1999.

The original bulletins for the positions established in Southern District Tie Gang 9163 were posted with a 5 day/8 hours per day workweek on December 11, 1998 to become effective January 1, 1999, and stated that the gang was subject to the Alternative Work Week conditions under PEB 219. The findings of that Board

resulted in the Imposed Agreement dated February 6, 1992, which, among other things, contains Article X, Alternative Work Week and Rest Days, applicable to production crews such as this Tie Gang, permitting the Carrier to establish either 5 day/8 hours per day or 4 day/10 hours per day workweeks with consecutive rest days, at least one of which will be Saturday or Sunday, and both, if operationally possible. On the property the Carrier stated that Supervisor Early advised it that the change to a 4 day/10 hour per day workweek for this Tie Gang was accomplished under Article X, not paragraph 1 of the 1974 MOA, was not done as a result of an election of a majority of employees, and that the employees were advised at the time of the change that they may have to return to a 5 day/8 hours per day workweek. The Organization did not rebut this assertion but responded that if that were the case, Supervisor Early violated the Agreement at that time.

The Organization contends that the clear language of paragraph 9 of the MOA requires the Carrier to give the employees 15 days' notice of a change of their workweek, which was admittedly not done in this case, requiring a remedy. It asserts that Article X does not apply and only covers the Carrier's establishment of system and regional gangs, not changes to them, and was designed to add to the 1974 MOA, not change its intent. The Organization argues that this case is governed by the holding in Third Division Award 36593, which dealt with an identical issue on this property, and sustained the claim, and relies upon Third Division Award 29542 as well as Public Law Board No. 6206 to support its request for monetary relief in this case.

The Carrier argues that the Organization failed to sustain its burden of proving a violation of the Agreement in this case, citing Third Division Awards 12821, 13741, 26257 and 31930; Public Law Board No. 1838, Award 40. It notes that Third Division Award 36593 is not relevant to this dispute because the gang in that case had been established under the 1974 MOA, subjecting it to the 15-day notice requirement under paragraph 9, while the Tie Gang involved herein was established under Article X of PEB 219, which was stated clearly on the bulletins. The Carrier further contends that by its very language in order for the notice requirements of paragraph 9 of the MOA to be applicable, the change of workweek had to occur under paragraph 1 of the 1974 MOA, which the Organization failed to prove. The Carrier asserts that the Organization did not rebut its evidence that the gang was established under Article X of PEB 219, and not by majority election of its

members, and argues that such provision was designed to give the Carrier greater flexibility in utilizing its production gangs in a manner consistent with its changing needs. The Carrier also argues that, even were the Board to find that paragraph 9 of the MOA was somehow applicable to this situation, the Organization failed to show how any gang member suffered a monetary loss, noting that penalty pay is not appropriate on this property.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of the Agreement in this case. Initially we note that Third Division Award 36593 dealt with a different tie gang, established at an earlier time under different supervision, and specifically referenced that their 4 day/10 hour per day workweek was allowed by paragraph 1 of the 1974 MOA. The Award made no mention whatsoever of Article X of PEB 219 or any arguments related thereto. On this basis we are unable to conclude that the issues and facts presented to the Board in that case are identical to those presented herein or that the holding is determinative of this case.

The issue we must resolve is whether Article X of PEB 219 applies to the tie gang schedule in this case and, if so, whether the Carrier is permitted to change such schedule without the 15-day notice required in paragraph 9 of the 1974 MOA. Based upon the unrefuted facts presented on the property, the instant tie gang was established subject to Article X of PEB 219, and both the Organization and the employees were notified of that fact in the posted bulletins. Further, there is no evidence that the workweek changed from the posted 5 day/8 hours per day schedule to the 4 day/10 hours per day schedule as a result of a vote of a majority of gang members under the provisions of paragraph 1 of the 1974 MOA. By its very terms, paragraph 9 applies the 15-day notice requirement for termination of a four day workweek to those gangs established pursuant to paragraph one of the 1974 MOA. The Organization failed to show that the four-day workweek schedule of the tie gang in issue herein meets that criteria. Further, because there is no language in Article X of PEB 219, under which the work schedule of this tie gang was established, requiring a specific period of notice prior to a change of schedule, the claim for compensation must fail. Gang members were notified of the change in sufficient time so as not to suffer any loss of rest day or wage entitlement.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of May 2004.