

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37153
Docket No. MS-36534
04-3-01-3-18

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Herman Dixon
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

"This is to serve notice, as required by the Uniform Rules of Procedure of the National Railroad Adjustment Board effective May 16, 1994, of my intention to file an Ex Parte Submission within 75 days, covering an unadjusted dispute between Herman Dixon, Machine Operator, and the Union Pacific Railroad Company involving the following in the year 1998:

1. Violation of Rule 14 . . . straight time vs overtime
2. Violation of Award 298 . . . unadjusted per diem and expenses

The issue at hand in this case is whether Union Pacific was in violation of these provisions when they cut-off Mr. Dixon's position headquartered in Addis, LA after only 3-4 months in Addis, then rebullentined it and headquartered it in Livonia, LA with rest days of Thursday and Friday, thus working the gang on both Saturday and Sunday.

Mr. Dixon is seeking the remedy of overtime payment for each weekend he was scheduled to work both Saturday and Sunday, in accordance with Rule 14. He is also seeking, in accordance with Award 298, payment and reimbursement for his travel expenses and unpaid per diem incurred as a result of the headquartering in Livonia, LA."

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.

Prior to March 1998 the Claimant was assigned to Gang 2232, an "on-line" gang with no fixed headquarters, but with work near Addis, Louisiana. At that time the Claimant learned that the Carrier intended to give Gang 2232 a fixed headquarters so he successfully exercised his seniority, only to rebid on his original position sometime thereafter. On June 26, 1998 the Carrier abolished that position due to a force reduction. At that time the Claimant bid on a position on Gang 2236, headquartered in Livonia, Louisiana, with advertised rest days of Thursday and Friday. The Claimant remained in that position on Gang 2236 at all material times herein.

The Claimant filed the instant claim in which he challenges the Carrier's change of headquarters for Gang 2232 and the subsequent rebulletin of that position to Gang 2236 with Thursday and Friday off. The Carrier replies that the claims are time-barred and, if not, should be dismissed on the merits.

The record reflects that the Carrier is correct that the claims were not filed within the nine months required, but we disagree that that fact compels denial of all of the claims. Rather, only the claim that the Carrier could not change the Claimant's headquarters to Livonia, Louisiana, is barred. We reach this conclusion because the record shows that the claim relating to the change in the Claimant's days off survives by virtue of an agreement by the Carrier to extend the time limits

for processing of that claim. Thus, we next move to consider the merits of that claim.

We conclude that this claim must also be rejected. The Board has held, including a decision on this property, that although there is a presumption or strong emphasis that Saturday and Sunday be employees' days off, the Carrier can utilize staggered workweeks so long as the reasons for doing so are operational requirements, including budget considerations relating to overtime pay. (See Third Division Award 30011.) Here, the Carrier argues that the schedule for the Livonia, Louisiana, gang met that standard because Gang 2236 was used to provide seven-day protection for the Livonia Hump Yard and because the gang that performed this work before the rebulletin did not have the equipment that was used by Gang 2236.

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 25th day of August 2004.