

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37321
Docket No. MW-37248
04-3-02-3-248

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it improperly changed the Monday through Thursday work week for SPG Gang 6XT5 to a Sunday through Wednesday work week and then failed and refused to properly compensate the employees assigned to SPG Gang 6XT5 for work they performed on March 18, 2001 and were entitled to perform on March 22, 2001 [Carrier's File 12(01-0159) CSX].
- (2) As a consequence of the violation referred to in Part (1) above, Claimants listed below shall now each be compensated for the difference between the overtime rate of pay and the straight time pay for ten (10) hours' pay for March 18, 2001 and for ten (10) hours' straight time pay for March 22, 2001 at their respective rates of pay.

C. J. Johnston	J. Wilson	D. E. Salisbury
G. L. Mechling	T. J. Fox	P. P. Ruggieri
T. M. Putzulu	P. L. Petit	R. E. Dunn
D. L. Harris	J. J. Ward	C. F. Mullins
P. A. Fuller	A. J. Hill	M. Callahan
J. C. Thomas	E. Townsend	R. A. Chapman
R. L. Bouldin	R. A. Johnson	G. Borrero

F. J. Manwaring	W. L. Pierce	J. J. Allen
L. A. Maldonado	M. J. Stortz	R. F. Cane
R. S. Hamilton	L. E. Harris	M. B. Mares
R. L. Tuxman	O. C. Delaney	R. R. Sanders
P. C. Leon	F. H. Gregor	D. Evans
A. A. Tripi	K. G. Rushey	T. F. McGuire
M. C. Monaghan	W. C. Figueroa	A. Dejesus"

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 is a claim on behalf of 42 team members of floating System Production Gang (SPG) 6XT5 alleging that their workweek was improperly changed from Monday through Thursday with Friday, Saturday and Sunday designated as rest days to a Sunday through Wednesday workweek with Thursday, Friday and Saturday designated as rest days.

The Organization contends that the team members of SPG 6XT5 were not given timely or proper notification of the change in the starting time of their assignment. Therefore, according to the Organization, the Claimants are entitled to be paid at the time and one-half rate for their service on Sunday, March 18 and paid an additional ten hours straight time pay for Thursday, March 22, 2001. In support of its position, the Organization relies upon the following Agreement provision:

**"APPENDIX 'S' UPDATE SYSTEM PRODUCTION GANG
AGREEMENT**

Updated as of June 1, 1999

**ARBITRATED AGREEMENT
BETWEEN
CSX TRANSPORTATION, INC.
AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

* * *

**Section 6 – Work Week on SPGs (Amended 9/28/93) (Amended by
PLB 5810)**

- B. The most desirable forty (40) hour work week for SPGs will be four (4) consecutive ten (10) hour days followed by three (3) consecutive rest days, with both Saturday and Sunday observed as rest days. The work week and rest days of SPGs may be changed upon five (5) working days notice and allowance of overtime, if applicable, consistent with the findings of Public Law Board No. 5810, Award 1."

The Carrier denied the claim, asserting that it was under no contractual obligation to pay the Claimants the overtime rate for Sunday, March 18, 2001 because they did not work any overtime on that date. Moreover, the Carrier contended that the members of the gang had been given proper notice that their rest days would be changing in accordance with Section 6, set forth above. Finally, the Carrier argued that it has the flexibility to rearrange the schedule, and where, as here, proper advance notice has been given, there is no basis for compensating the Claimants for work not performed on Thursday, March 22, 2001.

The Board's review of the record shows that SPG 6XT5 was listed by bulletin dated November 15, 2000. The work schedule, designated as "tentative," was to begin on February 26 and 27, 2001, with safety training taking place on those dates.

Operational difficulties caused a delay in the production season start date. Although the Organization argued that there was an "undisputed failure to notify the members of SPG 6XT5 that their workweek was changed at least five (5) working days prior to such change," the record does not substantiate that assertion. On the contrary, there is substantial evidence that the Carrier did in fact notify the team by telephone and in writing that there would be changes in the work schedule. Team members of SPG 6XT5 were notified by telephone on February 22 and 23, 2001 about the delayed start. In addition, a letter dated March 9 was sent by U. S. Mail to each employee's mailing address that the start date would be March 18, 2001. Based on this record, we find that the Carrier complied with Section 6(B) of the SPG Agreement requiring it to give five days' advance notice of the change to the affected employees.

The Claimants herein reported for service on Sunday, March 18, 2001 as the first day of their four day workweek. They performed 40 hours of service through Wednesday, March 21, 2001 and were properly compensated 40 hours' pay at the straight time rate of pay. The record fails to document any employee who performed service on this assignment in the week preceding March 18, nor does the record indicate that any employee performed more than 40 hours of service during the week of March 18 through March 21, 2001. Under these circumstances, no additional compensation is warranted.

Concluding as we do that the Organization failed to prove that the Carrier committed a violation of the Agreement when it changed the scheduled workweek and rest days for SPG 6XT5 or that the Claimants are contractually due the compensation requested, we must rule to deny the claim.

AWARD

Claim denied.

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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 21st day of December 2004.