

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39275
Docket No. MW-38124
08-3-NRAB-00003-030525
(03-3-525)

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 Employees
(Union Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly changed the work period and rest period for employees assigned to Gangs 8547, 8549 and 8559 on August 10, 2002 and continuing (Carrier’s File 1342733).**
- (2) As a consequence of the violation referred to in Part (1) above, ‘. . . all of the Claimants assigned to Gangs 8547, 8549 and 8559 on August 10, 2002, and continuing until the violation ceases to exist, each be paid straight time for the days that they were told to rest when in fact they should have been working, and each employee of Gangs 8547, 8549 and 8559 be compensated at the overtime rate for all rest days that they were required to work when in fact they should have been enjoying them at rest. Payment shall be in addition to any compensation they may have already received.’”**

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 this dispute, System Gangs 8547, 8549 and 8559 were working an alternative work period in accordance with Rule 40. Specifically, these gangs had their work days compressed into the first half of each pay period and they accumulated rest days at the end of each pay period as allowed by that Rule.

In August 2002 (and after being instructed to observe multiple rest days) the employees' compressed halves schedule was switched to a schedule where rest days were accumulated at the beginning of each pay period and work days were compressed into the end of the pay period.

The Organization contends that the change was made in violation of Rule 40 – ALTERNATIVE WORK PERIODS, which reads, in relevant part, as follows:

“(a) With the election in writing from the majority of the employees working on a project and with the concurrence of the appropriate Manager, a consecutive compressed half work period may be established where operations permit. The consecutive compressed half will consist of consecutive working days that may be regularly assigned with eight (8) or more hours per day (i.e. 8, 9, 10, 11, or 12 hour workdays) and accumulated rest days. The consecutive compressed half will commence on the first calendar day of the payroll period unless changed by mutual agreement between the Manager and a majority of the employees. The consecutive compressed half arrangement will equal the number of hours worked as if the assignment was for a normal half with 8-hour workdays. Accumulated rest days for employees assigned to a gang

working a consecutive compressed half arrangement will consist of the remaining days in the payroll period.

(b) As an alternative to paragraph (a), again with the election in writing from the majority of the employees working on a project and with the concurrence of the appropriate Manager, a compressed work week period may be established where operations permit.

* * *

(f) Observance of holidays will be handled as follows:

(1) Unless agreed otherwise by a majority of the gang members and the appropriate Manager, if a holiday falls on a Monday, Tuesday, Wednesday, Thursday, Friday or Sunday, the holiday will be observed at the end of the compressed work period and the amount of service hours ordinarily scheduled in line with the terms of this Agreement will be reduced by (8)."

There is no contention by the Organization that the initial establishment of compressed halves for these gangs was inconsistent with the terms of Rule 40. The Organization focuses on the change of schedule in August 2002 and contends that in order to accomplish that change, there first had to be an election by the employees in writing. The Carrier asserts that no election in writing was necessary and also produced statements from five employees showing that in June 2002 "... we had a vote taken as to changing over from 1st half compressed to 2nd half compressed" and that they "... remember the outcome as being a majority vote of yes."

We find that whether the election to change the compressed halves was in writing or verbal is immaterial. In Rule 40(a) the parties specifically provided for employee votes in writing for establishment of the compressed halves ("With the election in writing from the majority of the employees working on a project and with the concurrence of the appropriate Manager, a consecutive compressed half work period may be established where operations permit") as well as establishment of a compressed workweek in Rule 40(b) ("As an alternative to paragraph (a), again

with the election in writing from the majority of the employees working on a project and with the concurrence of the appropriate Manager, a compressed work week period may be established where operations permit”) [Emphasis added]. However, for certain changes to those already established compressed halves or holidays for gangs working compressed periods, the parties did not, as they did for the establishment of compressed work periods, provide for an “. . . election in writing from the majority of the employees working on a project.” Instead, the parties only provided for change “. . . by mutual agreement between the Manager and a majority of the employees” (for commencement of the compressed half - Rule 40(a)) or “[u]nless agreed otherwise by a majority of the gang members and the appropriate Manager . . .” (for observance of a holiday at the end of a compressed work period - Rule 40(f)(1)).

Thus, for circumstances where the parties desired to have an “election in writing,” they specifically provided for that requirement. When they just wanted a change approved “. . . by a majority . . .,” they did not provide for an election in writing. The point here, as correctly raised on the property by the Carrier in its December 2, 2002 letter, is that “Rule 40(a) does not require a written vote for a schedule change after the gang has agreed to a compressed half schedule; it requires a written vote for the gangs to agree to work a compressed half.” The Carrier is correct in its reading of Rule 40(a). Inasmuch as the parties specifically provided for elections in writing for certain circumstances, had they desired a similar precondition for the type of change in dispute in this case, they could have easily said so. However, they did not do so.

In this case - whether by written or oral vote - the evidence sufficiently shows that a majority of the involved members of the gangs working the compressed halves agreed to the schedule change. Whether the vote was in writing or by voice, the change was approved in accord with Rule 40(a) - a majority of the employees agreed to the change.

In light of the result, the Carrier’s assertion that it had also held a written vote is therefore moot. Similarly, because Rule 40(a) was followed in making the change, there was no contractual requirement to rebulletin the positions.

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The claim shall be denied.

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 21st day of July 2008.