

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40099
Docket No. MW-40330
09-3-NRAB-00003-080117**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(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, beginning September 1 and continuing through September 23, 2006, the Carrier changed B&B Gang 9308 employees’ regularly assigned work week of Monday through Friday workdays with Saturday and Sunday rest days to an alternate work period of a compressed half with workdays on the first (1st) day of the month through the eighth (8th) day of the month and again on the fifteenth (15th) day through the twenty-third (23rd) day with the days between said workdays as rest days (System File MW-07-02/1462738 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants J. Horstman, J. Byrd, R. Castillo, H. Hayes, J. Norris, R. Castaneda and D. Calais, Jr. shall now each be compensated for a total of forty-eight (48) hours at their respective straight time rates of pay and a total of eighty-eight (88) hours at their respective time and one-half rates of pay.”**

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 established and maintain seniority in the Bridge and Building sub-department of the Maintenance and Way Department. They were assigned to System Gang 9308, an on-line mobile gang with bulletined hours 7:00 A.M. to 3:30 P.M. Monday through Friday. At the time this dispute arose, they were working in the vicinity of Mile Post 324.65 on the Lafayette Subdivision.

On September 1, 2006, pursuant to Rule 25(k) the Carrier requested that the Claimants vote to approve working a compressed half. The seven members of Gang 9308 voted unanimously to reject working a compressed half in favor of continuing to work eight hours per day, five days per week. Gangs 9168, 9169, 9328 and 9337 voted in favor of working a compressed half. The total vote for all five gangs was 33 to 14; just over 70% favored working the compressed half.

Gang 9308 worked at Mile Post 324.65 independently of the other four gangs. The other four gangs worked between Mile Posts 278 and 294. The Carrier asserts that all five gangs worked under the same curfew. The Organization argues that Gang 9308 worked under its own Form B track protection. The Carrier asserts that a Gang may work under redundant forms of track protection.

Rule 25(k) governs the resolution of this dispute. The employees who participated in the vote to establish an alternative work schedule work "on a project or within the same window. . . ." The Organization bears the burden of proving

that the Carrier, by including Gang 9308 in the September 1, 2006 vote, violated Rule 25 (k). The Carrier established on the property that the window was in effect based on the gang work between Mile Posts 278 and 297 and it contended that the curfew extended to Mile Post 324.65 - the location of Gang 9308. To carry each element of its case, the Organization must establish on the property that Gang 9308 worked under a separate window. It failed to establish this element of its case. Accordingly, this claim lacks merit and must 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 19th day of November 2009.