

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40368
Docket No. MW-40706
10-3-NRAB-00003-080518**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Southern
(Pacific Transportation Company [Western Lines])**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Regional Gangs 8165, 8170 and 8176, working in Region II in the L. A. Basin, to a work week of Tuesday through Saturday with rest days of Sunday and Monday, beginning March 4, 2007 and continuing (Carrier’s File 1476443 SPW).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now ‘. . . return Gangs 8165, 8170 and 8176 to their prior work week schedule, compensate all employees of Gangs 8165, 8170 and 8176 for all straight time hours lost for work they should be performing on Mondays and further compensate them for all hours worked on Sundays at the time and one half (overtime) rate of pay. Said compensation shall be from March 4, 2007 until the violation ceases to exist.***”**

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 dated April 27, 2007 protests the assignment commencing March 4, 2007 (through bulletin and subsequent abolishment of existing gangs) of three regional gangs working in the Los Angeles Basin to workweeks with schedules of other than Monday through Friday.

In relevant part, Rule 18 - WORK WEEK provides:

“(a) GENERAL - There is established for all employees, subject to the exceptions contained in this rule, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the operational requirements; so far as practicable, the days off will be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this agreement which follow:

(b) FIVE-DAY POSITIONS - On positions the duties of which can reasonably be met in five days, the days off will be Saturday and Sunday.

* * *

(f) DEVIATION FROM MONDAY-FRIDAY WORKWEEK - If in positions or work extending over a period of five days per week an operational problem arises which the Carrier contends cannot be met under the provisions of paragraph (b) of this rule, and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, and if

the parties fail to agree thereon, then if the Carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under this agreement.”

The question here is whether there was “an operational problem” under Rule 18(f) which permitted a deviation from the Monday through Friday workweeks established by Rules 18(a) and (b)? The evidence establishes that there was.

The Carrier asserted (and documented) that train traffic increased by approximately 50 percent over a three year period coming and going out of Los Angeles on the Yuma Subdivision toward Tucson and by more than ten percent going north or coming in through Las Vegas. Traffic patterns indicated to the Carrier that Saturdays and Sundays were better suited for utilizing track time for maintenance. The changes to the workweeks for the gangs then followed. Under the circumstances, we cannot find those changes unreasonable as an operational necessity or otherwise in violation of the Agreement.

With respect to the Organization’s contention that the Carrier did not notify the Organization of the changes in advance, the evidence in the record does not substantiate that assertion. The record evidence reveals that the Organization was notified in advance of the Carrier’s intentions. See e.g., the letter to the Organization dated January 4, 2007 from Director Track Maintenance A. S. Gonzales advising the Organization that:

“As information to BMW, I intend to bulletin two regional crossing and switch gangs working Tuesday through Saturday, and also intend to put up another regional crossing and switch gang working Sunday through Thursday, per SP Western Lines Agreement. When these gangs are assigned, we will abolish gangs 8162 and 8163 that are currently assigned.

The reason for the change is due to an operational necessity to have gangs available to perform weekend work on selected subdivision; Alhambra, Los Angeles, and Yuma, within the LASU that currently allows weekly curfews only on Saturday and Sunday. We plan on maintaining these regional gangs on this schedule until such time

operational needs require a change. Additionally, we intend to bulletin a regional surfacing gang and a welding gang on the same schedule.

Any questions or comments regarding the above, please contact me.”

Prior to the filing of the claim dated April 27, 2007, the Organization responded to the Carrier’s intended changes by letter dated February 26, objecting to the changes. Obviously, the Organization had advance notice of the Carrier’s intentions.

The Organization asserts that an understanding must be reached between the parties pursuant to Rule 56(e) before such changes can be implemented by the Carrier. Rule 56(e) provides:

“(e) Rule 22 - Starting Time - will be relaxed so as to permit the starting time of Regional Gangs to vary between the hours of 4:00 AM and 10:00 AM. When regular operations require working periods varying from those set forth above, hours of assignment will be designated by agreement between Management and General Chairman or his representative to meet service requirements.”

Rule 56(e) addresses changes to starting times. That is not what happened here and, therefore, Rule 56(e) is not the governing Rule. Rule 18 discussed above addresses changes of days and those provisions - particularly Rules 18(a) (b) and (f) - govern and do not require agreement between the parties for the changes. Under the requirements of Rule 18, the Carrier need only demonstrate operational necessities for the changes in work days for the gangs, which it has done.

This claim shall therefore be denied.

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 25th day of March 2010.