

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40383
Docket No. MW-38737
10-3-NRAB-00003-050148
(05-3-148)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 February 1, 2004 and continuing, the Carrier improperly changed the assigned work week of B&B Gang 9308 from Monday through Thursday work days and Friday through Sunday rest days to an alternate work period of a compressed second half working on the eighth (8th) of each month through the fifteenth (15th) and again on the twenty-third (23rd) through the end of the month with the days between such compressed work cycles as rest days (System Files MW-04-82/1393986, T04-11/1395925 and M4-MOP040/1399493 MPR).

(2) As a consequence of the violation referred to in Part (1) above, Messrs. J. Calais, Jr., M. Woytaszyk, W. Gardner, B. Carter, M. Wingate, J. McClure and R. Herrea shall now, beginning February 1, 2004 and continuing until they are returned to their aforesaid assigned work week, each be compensated for two (2) hours at their respective time and one-half rates of pay for each day beginning on the eighth (8th) day of each month through the fifteenth (15th) of each month and each day beginning on the twenty-third (23rd) through the end of each month and compensated for twelve (12)

hours at their respective time and one-half rates of pay for each Friday, Saturday and Sunday of each month that they were required to work.”

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 facts of the instant dispute do not appear to be at issue. This case involves three claims that were filed by three different General Chairmen who are all signed to the same Collective Bargaining Agreement. Each General Chairman filed a claim over the same situation.

During the time period of the claim, B&B Gang 9308 was working on the Lufkin Subdivision along with Tie Gangs 9168 and 9169 under the same 9 hour curfew or work window. This curfew was provided by the Harriman Dispatch Center and was intended for maintenance forces to have nine hours of available work opportunity per work day so that the gangs could perform their services without having to leave the track so trains could pass. According to the Carrier, this curfew directly increases production because it provides opportunity to work on the track.

Management took a vote from a majority of the employees working under the same work window to determine whether there was agreement to work a compressed work period. Only Gang 9038 voted to not work a compressed work

period. The vote was two in favor and five against within Gang 9308. The other gangs working on the Lufkin Subdivision voted in favor of the alternative work period and when the votes for all employees working within the same window were combined, the Carrier contends that a majority voted to change schedules.

The Organization claims that the Carrier violated the Agreement when it unilaterally changed the days of Gang 9038 even though the members of that Gang clearly voted against the change to a compressed work schedule. It contends that Gangs 9168 and 9169 were working on different, unrelated projects and that the three gangs were not working on the same "window" as defined by Rule 25. Thus, the Carrier did not have the right to change the schedule of Gang 9038 to a compressed work schedule. As a remedy, the Organization requests that the members of Gang 9038 be paid for all lost wages at the applicable rates of pay.

The Carrier stresses that the members of Gang 9038 were working on the same window as were Gangs 9168 and 9169 and, therefore, the Carrier had the right to take the combined vote of all three gangs on the question of the compressed workweek. It is uncontested that the majority vote of the three gangs combined voted to agree to a compressed workweek.

Rule 25 states in relevant part:

"WORKWEEK

Section 1.

* * *

(k)(I)With the election in writing from the majority of the employees working on a project or within the same window, and with the concurrence of the appropriate Manager, alternative work periods may be established to enhance production or rest time off where operations will permit. Work days and rest days of an alternative work period will be set forth in writing in advance of the beginning of the alternative work period

arrangement and said document will be posted or available at a convenient location accessible to the employees affected.

At the same time, a copy of the signed election for the agreed to work schedule will be forwarded to the General Chairmen. Alternative work periods established pursuant to this rule will have no less than eight (8) and no more than twelve (12) straight time work hours per each workday, and all rest days will be observed consecutively. The work days of the alternative work period may be scheduled on a non-consecutive basis so the consecutive rest day period may be observed during holidays, weekends, special events, etc. In any event, the number of straight time work hours of the alternative work period will equal the number of straight time work hours of the regular work period that the alternative work period replaced.

- (2) Rules in effect covering payment for service performed during hours outside a regular eight-hour assignment will apply to service performed during hours outside the work periods established pursuant to this agreement.
- (3) Rules in effect for consecutive or compressed work periods covering the administration of per diem allowances, vacation and holidays, will continue in effect for alternative work periods established under this agreement.”

After a review of the record evidence and the positions of the parties, the Board concludes that the Organization has been unable to meet its burden of proof. Based on the language of Rule 25, the Carrier acted properly when it placed Gang 9038 on a compressed work schedule in spite of the fact that a majority of that gang had voted against the change. Accordingly, the claim is 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.