

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40391
Docket No. MW-40574
10-3-NRAB-00003-080393

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(
(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 the Carrier improperly changed the T-2 (monthly first half regular work days of the 8th through the 15th) work schedule of Foreman G. Lewis and all the employees assigned to Southern District Tie Gang 9168, Foreman J. Scott and all the employees assigned to Southern District Tie Gang 9169 and Foreman M. Noska and all of the employees assigned to Switch Tie Gang 9194 and required said employees to work their rest days of March 5, 6 and 7, 2007 and did not allow them to work on March 13, 14 and 15, 2007 (System File LLW-07-13/1472751 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Foreman G. Lewis and all the employees assigned to Southern District Tie Gang 9168, Foreman J. Scott and all the employees assigned to Southern District Tie Gang 9169 and Foreman M. Noska and all of the employees assigned to Switch Tie Gang 9194 shall now each be compensated for thirty-three (33) hours at the respective straight time rates of pay for not being allowed to work on March 13, 14 and 15, 2007 and compensated for thirty-one (31) hours at their respective time and one-half rates of pay for time worked on their rest days of March 5, 6 and 7, 2007.”**

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 Foremen and employees of Southern District Tie Gangs 9168 and 9169, as well as Switch Tie Gang 9194 were assigned to and working on a tie renewal project on the Angelton Subdivision. Work began on the project on January 9, 2007. Before the employees began to work on the project, they voted to work a T-2 compressed half schedule. The Manager (Cecil Martinez) concurred with working a T-2 schedule. A T-2 compressed half schedule begins with rest days on the first and 16th followed by work days on the 9th and 24th.

On February 23, 2007, the Manager conducted a second written vote to switch from a T-2 to a T-1 schedule effective March 16, 2007. The majority of the employees working on the project agreed to the change. The Manager concurred with this change. The Carrier did not provide a copy of this second vote to the appropriate General Chairmen.

The Manager submitted a statement during the course of the on-property processing of the claim. He indicated that a majority of the employees agreed to change the schedule in the first period of March, when employees were still on the T-2 schedule. This change would result in the employees working and resting on a non-consecutive basis during that one two-week period. They would work on what would have been their rest days under a T-2 schedule on March 5, 6 and 7 and rest on what would have been their work days under the T-2 schedule on March 13, 14, and 15.

The Organization claims pay for these employees, because the Carrier had them work on their rest days. They worked 11 hours per day. The Organization claims pay for 33 hours at the Claimants' respective straight time rates.

The Organization argues that the Carrier committed one violation that led to another. The Carrier violated Rule 25 Section 1 (k) when it conducted a second vote on the project. It violated the practice of one vote per project. As a result of that violation, it required employees to work on their rest days.

The Board notes that the Organization's case turns on its assertion of the existence of a practice under the former Missouri Pacific Railroad Company of one vote per project. Other than the Organization's assertion, there is no evidence of the existence of a practice in the record developed on the property. Certainly, the language of the Rule does not support the "one vote per project" restriction.

The tally sheets from the vote of the employees assigned to the Angelton project held on February 23, 2007 establishes that a majority of the employees, with the Manager's concurrence, agreed to change the schedule from T-2 to T-1 effective March 16. Manager Martinez' statement is un rebutted. He states that the majority of the employees agreed to change the consecutive rest days during the last two week period under the T-2 schedule in order to avoid working 16 consecutive days. For that reason, they worked on what would have been their rest days under the T-2 schedule, on March 5, 6 and 7 and rested on March 13, 14 and 15, their scheduled work days under the T-2 schedule.

The pertinent language of Section 1 (k) (1) provides:

"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."

This language recognizes that changes to the alternative schedule may be made. In Third Division Award 39275, the Board interpreted the language of Rule 40 (b) of the contract between those parties. The language of 40 (b) is similar to the language quoted above. The Board noted that the language did not require a written vote to effectuate an adjustment to accommodate a special event. The Rule required a written vote to establish an alternative schedule such as a T-1 or T-2 schedule. It did not

require such a vote to make adjustments to the schedule. It required only that a majority of the employees agree and the Manager concur with the adjustment.

It is such an adjustment that resulted in the Claimants working on their rest days on March 5, 6 and 7. In the above analysis, the Board concludes that the Carrier complied with the Rules at each of the steps that led to the Claimants working on these three rest days. The second vote to switch from a T-2 to a T-1 schedule did not violate any Rule. The Organization failed to meet its burden of proof to establish the existence of a "one vote per project" practice. The Organization complains that the Carrier did not forward the vote tally sheets of the second vote on February 23 to the appropriate General Chairmen. That is not presented as the basis of the claim before the Board. It is tangential to it. The adjustment made during the last pay period under the T-2 schedule, which is the basis of the claim before the Board, is permitted under Rule 25 Section 1 (k) 1. A majority of the employees agreed to the adjustment so as to avoid working 16 straight 11-hour days. In the absence of any proof that the Carrier violated the parties' Agreement, the Board denies the claim.

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 25th day of March 2010.