

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 40814
Docket No. MW-40762
10-3-NRAB-00003-090013

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin 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 compressed work period of System Gangs 8501, 9003 and 9011 and required the employees assigned to said gangs to work on the scheduled rest day of July 24, 2007 (System File C-0740U-154/1483234).
- (2) As a consequence of the violation referred to in Part (1) above, each employe assigned to System Gangs 8501, 9003 and 9011 on July 24, 2007 shall now be compensated for ten (10) 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.

According to the record, the Claimants were working a compressed schedule pursuant to Rule 40 for the month of July 2007. They were properly scheduled to observe a holiday on July 1, work between ten and 11 hours on July 2-8, and then observe accumulated rest days during the period of July 9-15, 2007. For the second half of July, the original schedule had the gangs working eight consecutive 12-hour days on July 16-23 to produce the 96 hours of work they were entitled to receive. Then they would observe accumulated rest days on July 24-31. As originally scheduled, therefore, Tuesday, July 24 was to have been their first rest day.

The record establishes that the Carrier's supervisory personnel changed the schedule for the second half of July. Instead of working eight consecutive 12-hour days to reach their 96 hours, the revised schedule called for the gangs to work six 11-hour days on July 16-21 and three ten-hour days on July 22-24. While the revised schedule also totaled 96 hours, it had the gangs working on what was originally scheduled to be their first rest day.

Rule 40(l) requires that employees have their workdays and rest days "... set forth in writing a minimum of five (5) workdays in advance of the beginning of the work period. . . ." To comply with Rule 40(l) the Carrier had to post the revised schedule not later than July 4, which was the fifth workday prior to the beginning of the second half work period. The record establishes that the Carrier's supervisory personnel did not post the revised schedule until July 6, which was two days late. This means that the ten hours worked by the gangs on July 24 constituted work on a rest day for which the employees are entitled to overtime pay.

Because the Carrier only paid straight time for July 24, it violated the Agreement. The Claimants are entitled to the differential between straight time and overtime for the hours worked on July 24, 2007. The claim is sustained accordingly.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 3

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 15th day of December 2010.