

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 28151
Docket No. MW-27534
89-3-86-3-794

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed to properly compensate the employees assigned to Gang Nos. Y202, Y402 and Y292 for the work they performed on July 5, 6 and 7, 1985 (System File NEC-BMWE-SD-1362).

(2) As a consequence of the violation referred to in Part (1) above:

'Claim is made for 30 hours at the time and one half rates minus the straight time rate for the work performed on rest days July 5, 6, 7, 1985 for each of the affected employees at each of their respective 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 employees 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 waived right of appearance at hearing thereon.

The issue involved in this Docket has been before this Board a number of times previously. In Third Division Award 26518, involving these same parties, the Board stated:

"A review of the record before the Board warrants the conclusion that the Carrier is in error in the manner in which it is interpreting the operant Agreement and the Special Construction Gangs Agreement. Rule 40 unambiguously defines a 'work week' as one beginning on the first day on which an assignment is bulletined

to work. Paragraph 1(d) of the Special Construction Gangs Agreement clearly states that such work week can consist of 4 ten-hour work days with any 3 '... consecutive days as rest days.' Rule 90 (a) permits the same type of arrangement. The Carrier effectively bulletined 4 day work weeks. Rule 45 states that time worked in excess of 40 straight time hours in any work week will be paid at the time and one-half rate. Nothing in Rule 32 nullifies the mandates found in the Rules cited in the foregoing. Further, this latter Rule provides that the guidance found therein shall hold '... (e)xcept as otherwise provided in this Agreement' The burden of proof has sufficiently been met by the Organization as moving party in the instant case."

Third Division Awards 26519, 26522 and 26523 reached the same conclusion. We do not find Awards 26518, 26519, 26522 and 26523 to be in palpable error. They will be followed here.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.