

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29663
Docket No. MW-28494
93-3-88-3-304

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance
(of Way Employees
(
(CSX Transportation, Inc. (former
(Seaboard System Railroad)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the employes assigned to Force 6S04 were compensated at their respective straight time rates instead of their time and one-half overtime rates for the work they performed on October 31, 1986 [System File 6S04-86-56/12-27(87-191) Q].

(2) The Agreement was further violated when the employes assigned to Force 6S04 were not permitted to work their scheduled assigned hours on November 3, 1986.

(3) As a consequence of the violation referred to in Part (1) above, the employes assigned to Force 6S04 shall each now be allowed the difference between what they should have been paid at their time and one-half rates and what they were paid at their straight time rates for the work they performed on October 31, 1986.

(4) As a consequence of the violation referred to in Part (2) above, the employes assigned to Force 6S04 shall each be allowed ten (10) hours of pay at their straight time rates because they were not allowed to work their scheduled regularly assigned hours on November 3, 1986."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 basic facts are as follows. The Claimants are members of a floating extra gang housed in camp cars, assigned by bulletin to work five eight-hour days, Monday through Friday. Pursuant to Rule 38 the gang opted to work Monday through Thursday 10 hours per day. The relevant portion of Rule 38 reads:

"Section 1

Employees stationed in camp cars will be allowed, when in the judgment of Management conditions permit, to make weekend visits to their homes. If employees cannot by using regular train service after completion of work on the last day of the work week, arrive home within a reasonable time and return to their camp on the first day of the succeeding work week in time for regular service, they will be allowed to make up time during the week in order to do this, provided not more than two (2) hours shall be made up on any one day and at no additional expense to the Company.

Free transportation will be furnished over Company lines where service is available, consistent with the regulations of the Company, and any time lost on this account will not be paid for. The total time worked each day must be recorded in the time book on the day worked.

NOTE:

In the application of Rule 38, Section 1, System Forces, in making up time for the purpose of accumulating rest time for longer consecutive rest periods, may elect, under the provisions of Section 3, to work up to ten (10) hours on any calendar days to the extent that the total hours worked in each half month, at no additional expense to the Company, are the equivalent of the straight-time work hours therein. When a holiday falls on a regularly scheduled work day, a maximum of thirty (30) minutes per day over the regular 10-hour day may be worked up to a total of two hours in any one pay half, provided suitable working hours are available."

Upon the completion of work on Thursday, October 23, 1986, at Callahan, Florida, the gang was instructed to report to work the following Monday at Dublin, Georgia. The Carrier claims that in transporting the camp car to Dublin it encountered operational problems. Simply, it required more time than they had to make this move, which required movement by through freight from Callahan to Waycross, from Waycross to Savannah, and a move from Savannah to Dublin via Vidalia. Accordingly, the gang was instructed to report to work at Dublin, not on Monday; but on Tuesday. The gang worked Tuesday through Friday, 10 hours each day and had Saturday and Sunday off. They worked the following weeks Monday through Thursday.

Within the time limits, the instant claim was filed claiming straight time for not working on Monday and time and one-half for working the following Friday. The claim is premised on the following Rules:

"RULE 20

FORTY-HOUR WORK WEEK

NOTE: The expressions 'positions' and 'work' used in this Agreement refer to service, duties, or operations necessary be performed the specified number of days per week, and not to the work week of individual employees.

(a) GENERAL

The Carrier will establish, effective September 1, 1949, for all employees, subject to the exceptions contained in the Agreement, a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7); the work weeks may be staggered in accordance with the Carrier's operational requirements; so far as practical the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this Agreement which follow:

* * *

(i) BEGINNING OF WORK WEEK

The term 'work week' for regularly assigned employees shall mean a week beginning on the first day on

which the assignment is bulletined to work, and for unassigned employees shall mean a period of seven (7) consecutive days starting with Monday."

* * *

"RULE 26

CALL RULE

Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of two (2) hours and forty (40) minutes at time and one-half rate, and if held on duty in excess of two (2) hours and forty (40) minutes, time and one-half will be allowed on the minute basis."

"RULE 29

SERVICE ON HOLIDAYS AND REST DAYS

* * *

Section 2 - Rest Days

Service rendered by employees on assigned rest days shall be paid for under existing call rules unless relieving an employee assigned to such day, in which case they will be paid under existing rest-day rules. When Sunday is one of the rest days, existing rules providing for compensation on Sunday shall apply. Regular assigned rest days shall not be changed except after such advance notice to the employee as is now required under applicable rules."

It is the conclusion of the Board that there is no basis for the claim in the Agreement. Rule 20 gives the Carrier some discretion in the establishment of workweeks and rest days. Rule 38 also gives the Carrier input into the 4 ten-hour day workweek for gangs such as the one involved. There simply is no language in the Agreement that prevents the Carrier from making adjustments in days off once established.

In this case, the Carrier asserted the particular movement required more than three days. The Organization has not rebutted this assertion. Moreover, it has not demonstrated how the Claimants were damaged. They worked 40 hours in each week and their schedule met the targets of Rule 20 of an assignment with five consecutive workdays.

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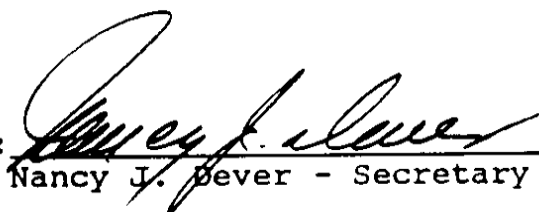
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.

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THIRD DIVISION

LABOR MEMBER'S DISSENT
TO
AWARD 29663, DOCKET MW-28494
(Referee Vernon)

The Majority clearly failed in its responsibility to review and properly render a decision in this docket. The facts were ignored and the Majority issued its erroneous award to further deprive the Claimants of their contractual rights. This award is palpably erroneous and should not be considered as precedent.

While the Majority is correct when it stated that Rule 20 (Forty-Hour Work Week) gives the Carrier some discretion in the establishment of work weeks and rest days, the issue joined in this case did not center on the establishment of a work week of a gang, but the altering of an established gang's work week. Clearly, the Majority erred when it found that, "*** There simply is no language in the Agreement that prevents the Carrier from making adjustments in days off once established." The fact is the gang had an established work week which by bulletin began on Monday. Rule 20, Section (i) requires that the work week for regularly assigned employees shall begin when the assignment is bulletined to work. In this instance, the regularly assigned employees had a work week of Monday through Friday with Saturdays and Sundays designated as rest days. Under the express provisions of Rule 38 (Make-Up Time - Weekend Visits Home), the gang was permitted to makeup two (2) hours a day and take off on Friday of each work week to make visits

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to their respective residences. In other words, the beginning of the bulletined work week could NOT validly be altered by Rule 38, i.e., it remained Monday irrespective of whether the gang elected (and was allowed) to makeup time. It stands to reason that Rule 38 contemplated that a gang makeup time first and take it off afterward, NOT the other way around. Hence, the clear and unambiguous language of the basic forty-hour work week rule, i.e., Rule 20, Section (i), mandates that the beginning of the bulletined work week is NOT adjustable once the gang is established.

The Majority has based its award on the fact that no time was lost. It also states that the Carrier has the right to change the work schedules. Nowhere in the Agreement does the Carrier have the right to work a gang fifty (50) hours in one week and thirty (30) hours in the next in order to circumvent paying overtime. The Carrier was requested to show records to prove that this was not correct, but never produced those records.

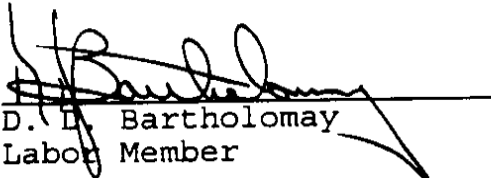
Although the Carrier asserted operational difficulties, it will be noted that such mitigating factors cannot validly serve to alter the clear language of Rule 20, Section (i). In any event, the Majority further erred when it failed to find a demonstration of how the Claimants were damaged. In this connection, it will be

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noted that anytime the Carrier's assignments violate the clear rules of the Agreement, the employes encompassed by said Agreement, i.e., which include the Claimants involved herein, are damaged by a diminution of their straight time and/or overtime work opportunities and the monetary benefits accruing thereto.

Therefore, I dissent.

Respectfully submitted,


D. D. Bartholomay
Labor Member