

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30011
Docket No. MW-29538
94-3-90-3-481

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 required employes on Section Gang 6061 to work a Tuesday through Saturday work week with Sunday and Monday rest days beginning April 21, 1989 and continuing (System File S-185/890636).
- (2) The Agreement was also violated when the Carrier required employes on Section Gang 6062 to work a Sunday through Thursday work week with Friday and Saturday rest days beginning April 21, 1989 and continuing (System File S-186/890637).
- (3) As a consequence of the violation in Part (1) above, Foreman C. J. Chambers, Sectionman Truck Operator J. B. Chacon, Sectionmen C. G. Miranda, S. L. Allen and any other employe assigned to Section Gang 6061 subsequent to April 21, 1989 shall each be allowed the difference between their respective straight time rates and their time and one-half overtime rates for all time worked on each Saturday subsequent to April 21, 1989, and they shall each be allowed eight (8) hours of pay at their respective straight time rates for each Monday subsequent to April 21, 1989 and continuing until the violation is corrected.
- (4) As a consequence of the violation in Part (2) above, Foreman G. D. Hill, Sectionman Truck Operator J. L. Lowe, Sectionmen E. F. Wahl, G. W. Thorton and any other employe assigned to Section Gang 6062 subsequent to April 21, 1989 shall each

be allowed the difference between their respective straight time rates and their time and one-half overtime rates for all time worked on each Sunday subsequent to April 21, 1989, and they shall each be allowed eight (8) hours of pay at their respective straight time rates for each Friday subsequent to April 21, 1989 and continuing until the violation is corrected."

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 employees 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.

Following discussion with the General Chairman and the employees involved, the Carrier determined to change the work weeks of Pocatello Section Gangs 6061 and 6062, involved principally in track maintenance. The change was from the long-standing Monday-Friday schedule to Tuesday-Saturday and Sunday-Thursday, respectively.

The Carrier acted in reliance on Rule 26, which reads in pertinent part as follows:

"RULE 26. WORK WEEK

- "(a) Subject to the exceptions contained in this 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) is hereby established. The work weeks may be staggered in accordance with the Company's operational requirements. So far as practicable the days off shall be Saturday and Sunday. This work week rule is subject to the provisions which follow.

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

- (b) FIVE-DAY POSITIONS. On positions the duties of which can be reasonably met in five (5) days, the days off will be Saturday and Sunday.

* * *

- (d) SEVEN-DAY POSITIONS. On positions which are filled seven (7) days per week any two (2) consecutive days may be the rest days with the presumption in favor of Saturday and Sunday."

These provisions make it clear that there is a strong emphasis on granting Saturdays and Sundays as rest days, whether under a five-day or seven-day work schedule. It is also clear that, under the Rule, the Carrier retains the right to utilize a "staggered work week", but this right is not unfettered; it must be in accordance with the Carrier's "operational requirements."

The Organization contends that the Carrier lacked the basis for justifying the change on "operational requirements." The Organization contends that the Pocatello Section Gangs operated on a Monday-Friday schedule for many years (and indeed returned to this schedule in January 1990); that other, larger yards also operate on Monday-Friday work weeks; that work required on Saturday and Sunday had been and can continue to be accomplished on an overtime basis; and that an allegedly increased level of activity was not argued by the Carrier prior to the change nor supported by convincing evidence once the argument was raised.

The Carrier's Submission commences by stating: "In April of 1989, the Pocatello Yard was experiencing a large increase in business due to the amount of traffic in the Northwest Corridor." However, as noted by the Organization, no statistics are provided to support this contention.

More persuasive is the extensive report of the Manager of Track Maintenance. He notes the Section Gangs' activity over a 21-month period prior to April 1989, in which the gangs "averaged 158 hours overtime per month...17.5 hours overtime per employee per month for the two yard gangs." He further states, in reference to a meeting which he held with the Section Gangs, "The objective of

this change is to perform the same type track repairs on straight time versus overtime."

As the Board views it, the Carrier has demonstrated a substantial level of activity required of the Section Gangs on seven days a week, as evidenced at least by the amount of overtime work previously assigned for Saturdays and Sundays. The Organization argues that the purpose of changing to staggered workweeks was to avoid overtime work at premium pay; the Carrier's Manager of Track Maintenance certainly confirms this. However, the Board sees no reason why the Carrier may not consider this as "operational requirements" under Rule 26. As suggested by the Organization, it may be the case that force level has been reduced, or, as suggested by the Carrier, the Pocatello traffic level has increased. Whatever the actual cause or causes, the Carrier has demonstrated that Saturday-Sunday track maintenance work is required, and Rule 26 provides a means to meet this need through staggered work week scheduling.

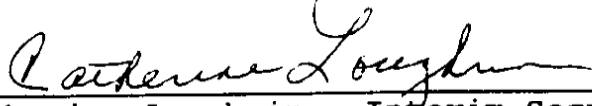
Numerous other Awards have concerned this issue. Worth noting is the Organization's reference to Public Law Board No. 4104, Awards 9, 10, 11. Under similar or identical Rule provision, these Awards sustained the Claim contesting staggered work weeks on the basis that the "Carrier has not met its burden of demonstrating the existence of operational requirement which would require a staggered work week." Whatever the factual situation underlying those Awards, the fact is that here the Carrier has demonstrated "operational requirements" for Saturday/Sunday work sufficient to permit staggered workweek schedules. This preserved right under Rule 26 cannot be made inapplicable even if the Carrier did not previously exercise this right with these Sections Gangs and even if the Carrier reverted to a Monday-Friday workweek for the Section Gangs at a later date.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.

LABOR MEMBER'S DISSENT
TO
AWARD 30011, DOCKET MW-29538
(Referee Marx)

This award is palpably erroneous. The reasoning is abominable and based on a specious assertion rather than documented evidence.

When the Carrier first approached the Organization concerning changing the work weeks of two (2) section crews located in the Pocatello, Idaho Yard, the Organization properly challenged the Carrier to show an "operational requirement" as specified in the Agreement rule. The Carrier asserted an increase in traffic but, when challenged, it could not produce any statistics to support its position. The Majority properly found that such evidence was not present in the record.

However, the Majority clearly erred when it gave credence to the amount of overtime worked by the crew and claimed that such overtime was an "operational requirement". Specious reasoning to say the least. Each of the crews consisted of a foreman, section truck driver and two sectionmen, for a total of eight (8) employees. Using the Carrier's figures that each employee averaged seventeen and one-half (17.5) hours of overtime per month, that equates to less than two (2) hours per weekend day in an average month. Even assuming that all the overtime was worked on a Saturday or Sunday, less than two (2) hours per day is certainly not excessive overtime

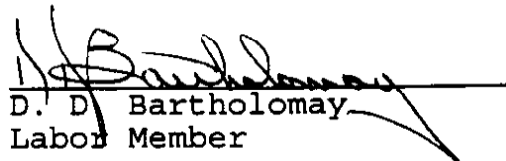
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when consideration is given to the fact that the Pocatello, Idaho Yard is in service twenty-four (24) hours a day, seven (7) days a week. Obviously, no "operational requirement" existed and the Majority's findings to the contrary are in error.

Awards 9, 10 and 11 of Public Law Board No. 4104 quite clearly should have been controlling here since the Carrier has not met its burden of demonstrating the existence of an "operational requirement" which would require a staggered work week.


This award is not based on evidence, is not factually correct and therefore, palpably erroneous. Therefore, I dissent.

Respectfully submitted,

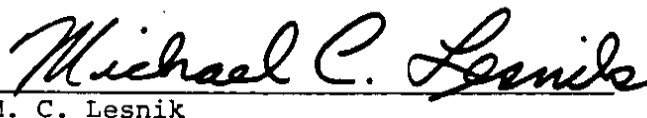

D. D. Bartholomay
Labor Member

CARRIER MEMBERS' REPLY
TO
LABOR MEMBER'S DISSENT
TO
AWARD 30011, DOCKET MW-29538
(Referee Marx)

The Dissent appears to be overwrought because the Majority viewed the Carrier's evidence of "operational requirement" objectively rather than basing its decision on the subjective opinion of the Organization. We must confess to some understanding for the obvious distress of the Dissent. We too have had occasions where a Majority ruled against our opinion, relying instead upon an objective consideration of the facts of the case.


M. W. Fingerhut


R. L. Hicks


M. C. Lesnik


P. V. Varga