

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35980
Docket No. MW-34926
02-3-98-3-659**

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier changed the work week of the gauging gang, joint elimination gang, Construction Gang No. 2, Construction Gang No. 3 and production support little giant crane on August 18, 1997 from a work week consisting of four (4) ten (10) hour workdays to a work week consisting of five (5) eight (8) hour days without proper notice to the General Chairman. (Carrier's File 8365-1-615).**
- (2) The Agreement was violated when it changed the work week of the gauging gang on August 25, 1997 from a work week consisting of five (5) eight (8) hour days to a work week consisting of four (4) ten (10) hour workdays without proper notice to the General Chairman (Carrier's File 8365-1-614).**
- (3) As a consequence of the violation referred to in Part (1) above, the Carrier shall compensate all affected employees ‘ . . . a minimum of ten (10) hours per day, plus all overtime for August 18, 19, 20 and 21, 1997, and overtime for all hours worked on Friday, August 22, 1997. . . .’**
- (4) As a consequence of the violation referred to in Part (2) above, the Carrier shall compensate Messrs. D. Smith, K. McDonough, G. Miner, W. Hay, M. Soldan, M. Allen, K. Hitchings, C. Sullivan and S. Ocenasek ‘ . . . a minimum of eight (8) hours per day, plus all**

overtime for August 25, 26, 27, 28 and 29, 1997, due to this violation.'"

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.

These two related claims, which were handled separately on the property, have been consolidated for arbitration by agreement of the parties. The operative background facts are not materially in dispute and the only issue presented for determination is what, if any, remedy is appropriate. In that connection, the Organization does not contest that the Carrier had operational needs for changing the workweek(s) and the Carrier concedes that its failure to give the General Chairman at least five days' written notice of the change in the Claimants' workweek(s) constituted violation(s) of the following contract language:

"MEMORANDUM OF AGREEMENT
between the
GRAND TRUNK WESTERN RAILROAD COMPANY
and its employees thereon represented by the
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

* * *

6. (a) The normal work week for employees assigned to positions in System Production Gangs and Division Production Gangs will consist of four days of ten straight time hours each, with rest days of

Friday, Saturday and Sunday. However, a work week of five days of eight straight time hours each, with rest days of Saturday and Sunday, may be established. The original determination of whether a System or Division Production Gang is to be established with a four or five day work week will be stated in the notice given to the General Chairman pursuant to Section 5 hereof. Thereafter, as the requirements of the service dictate, the work week may be changed from four days of ten straight time hours each to five days of eight straight time hours each, or vice versa, by the Chief Engineer giving at least five calendar days written notice to the General Chairman to that effect. Such changes may be made in less than five calendar days upon concurrence of the General Chairman." (Emphasis added)

The first claim was filed September 4, 1997, on behalf of every affected employee on the following production gangs: Gauging Gang, Joint Elimination Gang, Construction Gang #2, Construction Gang #3 and Production Support (Little Giant Crane) Mark Wilson. It is not disputed that the Carrier posted Bulletin No. PE-339, on Thursday, August 14, 1997, changing the days and hours of the aforementioned gangs from four days a week, ten hours per day, to five days a week, eight hours per day, effective Monday, August 18, 1997. Nor is it disputed that the Carrier failed to give the General Chairman any prior written notice of that change. (The Board does not find persuasive the Carrier's subsequent representation that the posting of Bulletin No. PE-339 on August 14, 1997 constituted four days' notice to the General Chairman). The amount claimed by the Organization as damages for each Claimant in the first claim for the Carrier's violation of the notice requirement is "ten (10) hours, per day, plus all overtime, for August 18, 19, 20 and 21, 1997, and overtime for all hours worked on Friday, August 22, 1997...."

The Gauging Gang referenced in the first claim, supra, consisted of Claimants D. Smith, K. McDonough, G. Miner, W. Hay, M. Soldan, M. Allen, K. Hitchings, C. Sullivan and S. Ocenasek. After just one week of working the Gauging Gang on the revised five days a week, eight hours per day workweek, the Carrier reversed its earlier decision. Again without any prior written notice to the General Chairman, effective Monday, August 25, 1997, the Carrier changed the Gauging Gang workweek from five days a week, eight hours per day back to the pre-August 18, 1997 schedule of four days a week, ten hours per day. In the second claim, also filed on September 4, 1997, the amount

claimed by the Organization as damages for each named Claimant on the Gauging Gang is "... eight hours per day, plus all overtime, for August 25, 26, 27, 28 and 29, 1997...."

The Carrier conceded the violation of the notice requirements of the Memorandum Agreement, supra, but denied the claims on grounds that no "penalty" is expressly mentioned in the Agreement for notice failures and/or the amounts claimed by the Organization are "excessive." We are not persuaded that the Carrier may ignore with impunity solemnly negotiated Agreement provisions like the notice provisions under consideration. Merely because the Memorandum of Agreement does not specify liquidated damages for proven and admitted violations does not mean that the Board cannot fashion an appropriate remedy to discourage blatant violations and encourage contract compliance. On the other hand, remedial or "make-whole" damages are the norm in labor-management arbitration rather than punitive damages. To that extent, we concur with the Carrier's position that the damages claimed by the Organization are excessive and disproportionate to the proven contractual violation. On balance we conclude that overtime payment for all hours worked by affected employees on Friday, August 22, 1997 is the appropriate remedy for the proven violation of the notice requirement in the first claim and an award of eight hours at the straight time rate for Friday, August 29, 1997 for each named Claimant on the Gauging Gang is the appropriate remedy for the proven violation of the notice requirement in the second claim.

AWARD

Claim sustained in accordance with the Findings.

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 19th day of March, 2002.