

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39319
Docket No. MW-37765
08-3-NRAB-00003-030093
(03-3-93)

The Third Division consisted of the regular members and in addition Referee Robert E. Peterson 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 Carrier violated the Agreement when, without abolishment and bulletin advertisement, it changed the assigned work week of employees assigned to System Gangs 9063 and 9065 from a Sunday through Wednesday work days with Thursday, Friday and Saturday rest days to a Monday through Thursday work days with Friday, Saturday and Sunday rest days beginning on December 5, 2001 and continuing. (System File J-0126-52/1302244)”**
- (2) As a consequence of the violation referred to in Part (1) above, each employee assigned to System Gangs 9063 and 9065 shall now “. . . be allowed ten (10) hours pay at his or her respective straight time rate for each Sunday the Carrier denied and denies the employee the right to work subsequent to December 5, 2001,” and, “allowed pay at his or her respective and applicable overtime rate for all services rendered on each Thursday subsequent to and including Thursday, December 13, 2001.**

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.

As set forth in the above Statement of Claim, it is the contention of the Organization that the Carrier unilaterally changed the conditions of the workweek of System Gangs 9063 and 9065 without first abolishing and re-bulletining the positions in accordance with Rule 20 of the Agreement from a Sunday through Wednesday workweek, with Thursday, Friday and Saturday as designated rest days to a Monday through Thursday workweek with Friday, Saturday and Sunday as designated rest days.

The Organization asserts that while Rule 40 gives employees of individual gangs certain rights consistent with the concurrence of the appropriate Manager, it does not give them the right to change the days of assignment without adherence to Rule 20.

Rule 40, Alternative Work Periods, reads in part here pertinent, as follows:

“(a) With the election in writing from the majority of the employees working on a project and with the concurrence of the appropriate Manager, a consecutive compressed half work period may be established where operations permit. The consecutive compressed half will consist of consecutive workdays that may be regularly assigned with eight (8) or more hours per day (i.e. 8, 9, 10, 11, or 12 hour workdays) and accumulated rest

days. The consecutive compressed half will commence on the first calendar day of the payroll period unless changed by mutual agreement between the Manager and a majority of the employees. The consecutive compressed half arrangement will equal the number of hours worked as if the assignment was for a normal half with 8-hour workdays. Accumulated rest days for employees assigned to a gang working a consecutive compressed half arrangement will consist of the remaining days in the payroll period.

- (b) As an alternative to paragraph (a), again with the election in writing from the majority of the employees working on a project and with the concurrence of the appropriate Manager, a compressed work week period may be established where operations permit. The employees in the gang may commence work earlier than the assigned starting time and/or work beyond the normal quitting time during the work week to equalize hours not worked on the remaining days of the work week. Make-up time accumulated for this purpose to be worked at the applicable pro-rata rate will not exceed four (4) hours per day on preceding regular workdays. The compressed work week will equal the number of hours worked as if the assignment was for a normal work week of forty (40) hours.

* * *

- (n) A compressed work period established pursuant to this rule may be terminated by serving a thirty-six (36) hours' advance notice. Such change will not take effect until the first scheduled workday of a work period.
- (o) Should any dispute arise regarding the application of this Agreement, the General Chairman and the designated Labor Relations officer will meet in an attempt to resolve any and all issues.

- (p) The provisions of the rule apply to a gang as a whole and not individual employees and is designed to improve productivity, and the composition of employee's rest hours to afford employees a greater opportunity for extended visits to their homes. No claims will be filed on behalf of any employees subject to this rule. Except as provided herein, existing practices, understandings, or any other Agreements regarding the assignment of work periods are not modified."

It is the position of the Carrier that nothing contained in Rule 20, Bulletining Positions - Vacancies, requires a bulletin issue with respect to the majority of the employees working on a project electing to establish or change the consecutive workdays or a so-called consecutive half work period pursuant to the terms and conditions of Rule 40.

Although the Organization contends that the identical issue in this dispute was previously placed before Public Law Board No. 6206, it appears from a rebuttal brief filed by the Organization in that dispute that it clearly stated that case was distinguishable from a situation involving a compressed workweek subject to Rule 40. In part here pertinent, the Organization said the following:

"For example, Rule 40 entitled "ALTERNATE WORK PERIODS" allows for the establishment of consecutive compressed half work periods with the election in writing from the majority of the employees working on the project and with the concurrence of the appropriate Manager. Obviously, that is not the type of situation we are faced with here."

As concerns a written petition by the employees, the Board, as did the Carrier, finds it noteworthy that it was not until more than one year after the initial claim had been filed that the Organization questioned whether a petition had been signed, and requested copy of the petition.

The Carrier contends the petition was misplaced or lost during the time subsequent to the signing of the petition and the research being done on the claim, In this respect, it contends that it is well aware of the need to have the petitions signed, and submits that the supervisor who lost the petition offered the names of at least seven gang employees who would verify the petition was accomplished. Further, the Carrier argues that it seems incredulous that an employee would not vote to go from a Sunday to Wednesday schedule to a Monday to Thursday schedule in order to have Sunday as a rest day.

The Board also finds significant argument of the Carrier that whereas the claim is filed on behalf of employees assigned to Gangs 9063 and 9065, no statements by any members of the gangs contending that the petition was not taken have been presented by the Organization into the record.

We conclude that the change in the workweek took place in accordance with Rule 40. The provisions of Rule 20 do not require the Carrier to first abolish and re-bulletin the positions on the gangs. Accordingly, the claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of September 2008.