

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40209
Docket No. MW-38555
09-3-NRAB-00003-040557
(04-3-557)**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 the employes assigned to System Gang 8513 that had been bulletined with a Monday through Friday work days with Saturday and Sunday rest days, to a Sunday through Wednesday work days with Thursday, Friday and Saturday rest days beginning on September 14, 2003 and continuing (System File J-0321-61/1381572).**
- (2) As a consequence of the violation referred to in Part (1) above, each employe assigned to System Gang 8513 shall now ‘ . . . be paid twenty (20) hours of time and one-half (1½) pay for time worked on September 14 and 21, 2003, and twenty (20) hours of straight time for Thursdays September 11 and 18, 2003, which was of their consecutive work days. This claim is continuous for overtime worked on rest days of Sunday and for time not allowed to work on Thursdays.’”**

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.

The facts of the instant dispute do not appear to be at issue. The Organization claims that the Carrier unilaterally changed the work days for Gang 8513 without properly abolishing and bulletining the positions as required. Gang 8513 was originally assigned to work Monday through Friday, eight hours per day with Saturday and Sunday as assigned rest days. Pursuant to Rule 40, the members of the Gang voted by majority vote to change their workweek to a compressed workweek of Monday through Thursday, ten hours per day with Friday, Saturday and Sunday as rest days. At some point subsequent to this vote, the members of the Gang voted to again change their workweek. They retained the compressed workweek, but changed the days of the workweek to Sunday through Wednesday, ten hours per day, with Thursday, Friday, and Saturday as rest days. Pursuant to this latest change, the Organization filed the instant claim.

The Organization claims that while it was appropriate for the Gang to change its workweek from Monday through Friday to Monday through Thursday, the Carrier did not have the right to change the work days to Sunday through Wednesday without abolishment and advertisement. As a remedy, the Organization requests that the members of the Gang be paid at the overtime rate for all hours worked on previously designated rest days.

Conversely, the Carrier contends that the burden is on the Organization to prove that there was a violation of the Agreement. It stresses that the members of Gang 8513 voluntarily chose to change their work days and did so by a majority vote. It contends that the language of Rule 40 specifically allows this action and there is no need to abolish or bulletin the positions. It further argues that Third Division Award 39319 specifically rejected the Organization's position. It requests that the claim be denied.

Rule 40 reads, in relevant part, as follows:

“(a) With the election in writing from a 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. . . .

(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 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 for the remaining days of the work week. . . .”

After a review of the record evidence and positions of the parties, the Board agrees with the Carrier that the Organization failed to meet its burden of proof. Based on the language of Rule 40 as well as Third Division Award 39319, the Carrier acted properly when it allowed Gang 8513 to change its workweek from Monday through Thursday to Sunday through Wednesday without abolishment or bulletining the positions. Accordingly, the claim is denied.

AWARD

Claim denied.

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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 21st day of December 2009.