

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41646
Docket No. MW-41618
13-3-NRAB-00003-110249**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier changed the work schedule of the employees on System Cat Surfacing Gang 9153 from T2 (compressed second half) to a sixteen (16) day straight work period commencing November 8, 2009 (System File UP-229-WF09/1532054 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant E. Beza and all other employees assigned to System Cat Surfacing Gang 9153 on November 16 and continuing through and including November 21, 2009 shall now each be compensated for the difference of pay between their respective straight time rates of pay and their respective time and one-half rates of pay for seventy-two (72) hours.”**

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.

This dispute involves a modification to the November, 2009 work schedule of a Cat Surfacing Gang governed by the Restricted Agreement dated July 15, 2003. Gang 9156 normally worked T2 alternative work schedules (11/8-15 and 11/23-30) but had their work days changed from 11/23-30 to 11/16-21 so that they could spend the Thanksgiving holiday on rest days at home with their families. There is no evidence in the record that their normal T2 work schedule did not resume in December 2009. Neither is there any dispute that all gang members worked, and received straight time compensation for, the full 168 hours of their regular work period. What occurred was that they worked 16 days straight in November 2009. The claim, filed on December 22, 2009, seeks the difference in pay between the straight time rate received for work between November 16 and 21 (their normal rest days) and the overtime rate, based upon an alleged violation of Sections 5(a) and (d) of the Restricted Agreement, which provide, in pertinent part:

“Section 5.

- (a) If agreeable with the manager and a majority of employees assigned to a gang where a restricted position is assigned . . . such gang . . . may work either a compressed work half or a consecutive work half. A compressed work half will not exceed eight days. A compressed work half may begin on the first, eighth, sixteenth, or twenty-third of each month. A copy of the written vote of the members of the gang . . . will be provided to the General Chairman.

* * *

(d) If Carrier wishes to work an alternate work schedule other than as provided in Section 4 and Section 5(a) above, affected employees will be notified at least fifteen (15) working days in advance of the proposed change, with a copy of the notice provided to the General Chairman. Upon written concurrence of the employees involved and the General Chairman, the alternative schedule may be implemented. Such alternative schedules will be implemented on the first of the month and will have consecutive rest days.”

The Carrier attached a statement from Manager Jeff Cook to its February 12, 2010 denial, indicating that he was notified by the gang Foreman on or about September 28, 2009 that the gang wanted to change from a T2 to a T1 to have the Thanksgiving holiday off, that he agreed and asked the Foreman to make sure all of the gang members were agreeable, and was later informed that they were. Cook also stated that none of the gang members ever raised any objection between September 28 and November 8, or after the gang was notified on October 28, 2009 that they had to work 16 days straight. The Carrier’s position on the property was that the alleged change of work schedule was instigated by the gang members and approved by the Manager because it was a quality of life issue that could be accommodated, and the only time a vote is required is when the gang initially wants to change to an alternative schedule, which had previously occurred with this gang. The Carrier relies upon the following language contained in Section 4 of the Restricted Agreement, and Rule 25(k)(1) of the July 1, 2000 Agreement:

“Section 4.

* * *

Employees who are required to work on a recognized holiday, or are required to work on a day substituted for a recognized holiday will be compensated for such service at the applicable overtime rates in addition to the holiday pay. Substitution of holidays will be governed by Rule 25(k) of the Agreement signed April 18, 2001.

RULE 25(k)(1)

* * *

Alternative work periods established pursuant to this rule will have no less than eight (8) and no more than twelve (12) straight time work hours per each work day, and all rest days will be observed consecutively. The work days of the alternative work period may be scheduled on a non-consecutive basis so the consecutive rest day period may be observed during holidays, weekends, special events, etc. In any event, the number of straight time work hours of the alternative work period will equal the number of straight time work hours of the regular work period that the alternative work period replaced.”

The Organization argues that the Carrier violated the Restricted Agreement when it failed to provide employees of Gang 9153 with at least 15 working days’ notice and failed to provide the General Chairman a copy of the notice prior to implementing the compressed work half schedule change on November 8, 2009, and arbitrarily implemented this change without the written concurrence of the members of the gang or the General Chairman. It asserts that the Carrier’s defenses are without merit, noting that the Restricted Agreement governs Gang 9153, not Rule 25(k) which relates only to substitutions of holidays and not work schedule changes for restricted gangs. The Organization points out that it is undisputed that no vote was taken or concurrence sought from the General Chairman for this change of schedule. It relies on Third Division Award 40355 as being directly on point to the issue raised in this case.

The Carrier contends that the change in workdays that occurred in November 2009 was not a change in the schedule of Gang 9153, which remained a T2 gang. It contends that, at the employees’ initiation, they elected to move their work days so that they could enjoy the Thanksgiving holiday at home with their families, and the Carrier accommodated this change. The Carrier notes that this is permitted by Rule 25(k) inasmuch as all gang members were compensated in exactly the same manner as they would have been had no change occurred, and that there is

no conflict between this provision and the applicable terms of the Restricted Agreement. It asserts that the Organization failed in its burden of proving any Agreement violation or any loss of earnings, and alleges that there is an irreconcilable dispute in fact with respect to the issue of gang notification of the change.

A careful review of the record evidence convinces the Board that, unlike the situation dealt with in Third Division Award 40335, there is no evidence in this case of a permanent change in schedule without a vote or proper notice. What occurred here was a change in the workday/rest day period for the second half of November 2009 so as to permit gang members to spend the Thanksgiving holiday with their families rather than at work. There is no dispute that the Restricted Agreement applies to Gang 9153 and takes precedence over the July 1, 2000 Agreement where it conflicts, but the language of Section 4(b) of the Restricted Agreement cited above states that substitution of holidays will be governed by Rule 25(k) of the Agreement. That provision permits adjustment of work days in an alternative work period so that a gang can have their consecutive rest day period observed during holidays, so long as there is no loss of straight time hours worked and received, which is what occurred here. The Board sees no conflict between these provisions, and cannot discern from the language of the Restricted Agreement relied upon by the Organization an intent to deprive employees governed by the Restricted Agreement from the benefits permitted by Rule 25(k).

While Rules 4 and 5(a) and (d) of the Restricted Agreement do set forth the proper procedure that the Carrier must follow when it wishes to change an already agreed-upon alternative work schedule, the Board does not believe that is what occurred on the specific facts of this case. The Organization has not shown that the schedule change in dispute was initiated by the Carrier or done for its convenience, rather than the convenience of the employees, which appears to be the situation contemplated by Section 5(d). Even if the Board were to agree that the provisions of Section 5(d) apply in this case, and that the Carrier violated the strict notice and voting requirements when the adjustment of the rest/work days resulted in the requirement that gang members work 16 straight days rather than non-consecutive days referenced in Rule 25(k)(1) because there was no showing of any loss of regular work hours or compensation for Gang 9153 members in November 2009, and they

Form 1
Page 6

Award No. 41646
Docket No. MW-41618
13-3-NRAB-00003-110249

received the benefit of enjoying their rest days with their families during the Thanksgiving holiday, we find no basis to award additional compensation.

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 24th day of April 2013.