

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42811  
Docket No. MW-43296  
17-3-NRAB-00003-150550**

**The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division –  
IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it reduced the April 13 through April 17, 2014 work week of Gang S134 from forty (40) hours to twenty-four (24) hours (Carrier's File NEC-BMWE-SD-5311 AMT).**
- (2) As a consequence of the above-stated violation, Claimants W. Dew, M. Asselin and A. Brockmiller shall each be allowed sixteen (16) hours' pay at the applicable straight time rate."**

**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.**

Claimant W. Dew has established and maintains seniority as a foreman. Claimant M. Asselin has established and maintains seniority as a trackman, and Claimant A. Brockmiller has established and maintains seniority as a truck driver. At all relevant times associated with this dispute, the Claimants were regularly assigned to their respective positions on Gang S134. Prior to the incident given rise to this dispute, Claimants' assigned work week was Sunday through Thursday with rest days of Friday and Saturday.

The relevant facts giving rise to this matter are not in dispute.

On April 11, 2014, the Claimants were given notice that effective April 16, 2014, the tour of duty for their gang (S134) would be changing from Sunday through Thursday (8 hours paid per day), with rest days of Friday and Saturday, to a work week consisting of Friday through Tuesday (8 hours paid per day), with rest days of Wednesday and Thursday. For the revised work week beginning Sunday April 6, 2014, the Claimants worked Sunday through Thursday and observed rest days on Friday and Saturday. Saturday, April 12, 2014, was the last day of that work week and Sunday, April 13, 2014 was the beginning of their next work week. Accordingly, the Claimants worked and were paid for Sunday, April 13, 2014 through Tuesday, April 15, 2014, totaling 24 hours of pay each. Under this revised work schedule, the Carrier required the Claimants to observe the new scheduled rest days prior to the end of the work week that began April 13, 2014, which resulted in the Claimants observing rest days on Wednesday, April 16 and Thursday, April 17, 2014 causing them to lose sixteen (16) hours' pay for the work week that began on Sunday, April 13, 2014.

The Organization brought a claim under Rule 32, alleging that Claimants did not receive the 40 hours of pay to which they were entitled for the work week beginning on Sunday, April 13, 2014. The Claim further maintained that the Claimants were required to observe rest days under the revised schedule which resulted in Claimants not being allowed 40 hours for their regularly assigned work week that began on Sunday, April 13, 2014. The Claim further maintained that the Carrier's requirement that Claimants observe rest days of the new assignment during the work week which began under the previous schedule caused Claimants a loss of 16 hours [two days' pay] of work and wages.

The claim was subsequently progressed in the usual manner on the property up to and including conference between the parties on January 16, 2014 whereas

both parties maintained their respective positions. Whereas the parties were unable to resolve this matter, it was referred to the NRAB for resolution. The claim is now properly presented before the Board for final adjudication.

Boiled down to its basic elements, the dispute in the instant matter arose when the Carrier required the Claimants to observe rest days of a new/revised work week during the middle of their work week that began on Sunday, April 13, 2014, resulting in different rest days than their prior schedule. Rule 32 requires five work days, or 40-hours, and two rest days in each seven-day cycle. It is clear that the purpose of this rule is to provide that employees do not lose regular earnings in that they will receive 40-hours of pay over the course of each seven-day work cycle. In the instant matter, the cycle was thrown off with the creation of a new schedule with different mid-week rest days. However, looking at the cycle beginning April 16, 2014 through and including April 22nd, it is clear that employees received 40-hours of pay for this seven-day cycle. For the previous seven-day cycle beginning on Sunday April 13<sup>th</sup>, employees worked all three days to and including Tuesday April 15<sup>th</sup>, the last day of this schedule for which they received 24 hours of pay. As noted, the new cycle began on Wednesday April 16<sup>th</sup> and employees worked on this day under this new schedule. Importantly, there was a continuity of earnings during this change of schedule and no employee lost any earnings as a result of this change. Accordingly, it is clear that the Claimants were paid for five days in each seven-day period. As a result, while it may be true that for the last week of their old schedule the Claimants worked three days and were paid for three days (24 hours) and not for seven days, a technical violation of the Agreement occurred. However, as noted, since no employee was shorted any pay during this change of schedule, the Board cannot make a monetary award since to do so would essentially grant the Claimants a windfall.

Claim sustained to the extent noted and discussed above.

### **AWARD**

Claim sustained in accordance with the Findings.

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**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 28th day of November 2017.**

LABOR MEMBER'S CONCURRING AND DISSENTING OPINION  
TO  
AWARD 42811, DOCKET MW-43296  
(Referee D. Campagna)

In these cases, the Majority correctly determined the Carrier violated the Agreement when the Claimants were not allowed to work a forty (40) hour week on their old schedule. However, the Majority incorrectly asserted that the result was a technical violation and that awarding a remedy would create a windfall. It should be noted that the Forty Hour Work Week Rule is a National Rule and has been interpreted many times by this Board and other railroad boards of adjustment. The Organization cited ten (10) awards in its submission as Employees' Exhibit "B" that reviewed virtually identical factual scenarios. In each of those awards, the Board found a violation of the Agreement and awarded a full remedy. This Board should have followed the precedent established by those awards and awarded the requested remedy. For this reason, I strongly dissent to the Majority's findings in this case.

Respectfully submitted,

  
Zachary C. Voegel  
Labor Member