

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43016
Docket No. MW-42245
18-3-NRAB-00003-130231**

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

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it changed the work schedule for the employees assigned to Gangs 9247, 9248, 9575, 9157 and 9290 without written notice as required by Rule 28(c) and when said employees were not allowed to observe the President’s Day holiday at the end of their compressed work period pursuant to Rule 28(h) and when the Carrier failed to properly compensate the Claimants for working said holiday (System File UP619BT12/1566543 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, ‘... each Claimant shall now be paid eleven hours at the overtime rate of pay.’”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 claim protests the Carrier's scheduling of the President's Day holiday - Monday, February 20, 2012 - at the beginning of the work period (February 22) for the five specific gangs named in the claim who were working a T-2 compressed half work schedule in February, 2012, rather than at the end of the work period (February 29), under Rule 28(h), which provides, in pertinent part:

"RULE 28 - CONSECUTIVE COMPRESSED HALF WORK PERIODS

- (h) Observance of holidays will be handled as follows:
 - (1) Unless agreed otherwise by a majority of the gang members and the appropriate Manager, if a holiday falls on a Monday, the holiday will be observed at the end of the compressed work period and the amount of service hours ordinarily scheduled in line with the terms of this Agreement will be reduced by eight (8).
 - (5) If required to perform service during the hours at the end of the compressed work period observed as the holiday, employes will be compensated at the overtime rate."

In the on property correspondence, the Organization claims that the named gangs - who worked February 8-15 and were scheduled to work February 22-29 - were not given timely written notice of a change in schedule, and that the Carrier failed to show that a vote was taken concerning the change of the holiday. The Carrier responded with a written statement from Engineering Supervisor McClure,

confirming that the gangs were told on February 12 that they were going to a T-1 compressed half schedule starting March 1, and that they would be working February 23 thru 29, and then March 1 to 8, and observing the holiday on February 22 when they were still at home with their families rather than in the middle of a work period, and that no one from any gang voiced any objection to doing so. The Organization presented no statement from any of the gang members on whose behalf the claim was filed.

The Carrier argues that all gang members were offered the proposal to observe the President's Day holiday on February 22, 2012 rather than February 29, which would be in the middle of their work cycle, and that no one objected. It asserts that the Organization has failed to substantiate a violation of Rule 28, or to establish that there was no agreement by a majority of the gang members to change the date of observance of President's Day, especially in light of the reason for the change, which was to allow employees to spend the holiday with their families. The Carrier contends that this case is governed by the holding of PLB 6867, Award 20 which found that there was no requirement that the agreement to change the holiday schedule must be in writing, and that the Organization failed to meet its burden of proof when it offered no evidence contesting the agreement asserted by the Carrier.

The Organization maintains that the Carrier failed to timely notify employees of a change in their work schedule, failed to properly schedule the President's Day holiday on February 29, 2012, and required employees to work on that date without properly compensating them at the time and one-half rate required by Rule 28(h)(5). It argues that employees were never given a choice about moving the President's Day holiday, and no vote was taken.

A careful review of the record convinces the Board that the Organization has failed to sustain its burden of establishing that the Carrier violated Rule 28, or any other Agreement provision, when it scheduled the observation of the President's Day holiday for the named gangs working T-2 compressed halves in February, 2012 on February 22 rather than February 29. As noted in PLB 6867, Award 20, the Organization failed to present any statements from the Claimants asserting that no agreement of the majority of gang members was obtained to make the change, especially after the Carrier included a statement from Supervisor Miller setting

forth the facts concerning when the notice was given, the reason for the change, and the absence of any objection voiced by any employee affected. There is no requirement in the Rule that the agreement to change when the holiday is scheduled must be in writing. Assertions alone are insufficient for the Organization to meet its burden of proof in this case.

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 March 2018.