

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43017
Docket No. MW-42249
18-3-NRAB-00003-130236**

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 -
(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 9164, 4174, 9174, 9219 and 9194 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 UP620BT12/1566545 MPR).

(2) As a consequence of the violation referred to in Part (1) above, ‘... each Claimant shall now be paid eleven (11) hours of overtime. *’”**

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.

While this claim protests the Carrier's not permitting employes in the five specific named gangs who were working a T-2 compressed half work schedule in February, 2012, to observe the President's Day holiday - Monday, February 20, 2012 - at the end of their work period (February 29), the record reveals that they were permitted to do so. The real thrust of the claim is the allegation that the Carrier changed the work schedule of these gangs without the requisite 5 days written notice, and required them to work on February 22, which had been previously scheduled as their final rest day of the second half of February, 2012. It relies on Rule 28 (a) and (c) which provide, in pertinent part:

"RULE 28 - CONSECUTIVE COMPRESSED HALF WORK PERIODS

(a) The Carrier may establish by bulletin gangs with an alternative work period of a consecutive compressed half work period. 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, with the preference being 10 or more hour workdays except in cases of operational necessity. . The consecutive compressed half ... will begin with consecutive accumulated rest days followed by schedule work day (T2 schedule). 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 employes assigned to a gang working a consecutive compressed half arrangement will consist of the remaining days in the payroll period. The work days and rest days of the consecutive compressed half work period may be scheduled on a non-consecutive basis for holidays or governmental regulations.

(c) Employes working a compressed work period under paragraph (a) will have their workdays and rest days set forth in writing a minimum of five (5) workdays in advance of the beginning of the consecutive

compressed half work period arrangement and said written notice will be posted at convenient locations accessible to the employees affected.”

In the on property correspondence, the Organization focused on the fact that employees in these gangs were required to work on their last scheduled rest day - February 22 - without being properly notified of a change in schedule by written notice 5 days prior to the change. The employees had worked February 8 through 15, and were scheduled to work February 23 through 29 during the second half of the month, but Carrier scheduled the observance of the President’s Day holiday on February 29, and their work period to be February 22 through 28, rather than twelve (12) hour days from February 23 thru 28. The records establish that employees worked 11 hour days on February 22 and 23, 10 hour days on February 24 through 28, and celebrated President’s Day (and were paid for 8 hours) on February 29, comprising their 80 hour half. The Carrier responded that what is contemplated in Rule 28(a) is the number of work hours in a half, not work days, relying on the holding of PLB 6867, Award 19, which is based on the same language contained in the UP Agreement.

The Organization argues that the Carrier failed to timely notify employees of a change in their work schedule as required by Rule 28(c), and required employees to work on their final rest day in order to schedule the President’s Day holiday on February 29, rather than assigning the gang to work 12 hour days during their normal schedule. It requests payment at the overtime rate for all employees who were required to work on February 22 without proper notice, citing Third Division Award 40814. The Organization notes that PLB 6867, Award 19 arises under a different Agreement and is not binding on the Board.

The Carrier maintains that it complied with Rule 28(a) as well as Rule 28(h) by scheduling the President’s Day holiday on February 29, the last day of the work cycle, and spreading out the 80 hours in the second half on consecutive days of between 8 and 12 hours. It contends that this is the only requirement of Rule 28(a), which deals with the number of hours in a half, and not the number of days, as found in PLB 6867, Award 19 under the language of the UP Agreement from which Rule 28 was modeled. The Carrier asserts that all the Claimants were paid for their 80 hours in the second half of February, 2012 and observed their President’s Day holiday as negotiated, and that there was no showing of any harm suffered or

damages incurred as a result of any alleged lack of timely notice, relying on PLB 5546, Awards 8-12.

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 as alleged. As noted in PLB 6867, Award 19, a compressed schedule is limited to the number of hours per pay period, and not the number of days of work. The language in the UP Agreement in issue therein, is substantially identical to the language of Rule 28 herein. In fact, the Organization has relied upon a case - Third Division Award 40814 - arising under the language of the UP Agreement as well. In this case, the second half of February, 2012 had 80 hours. President's Day reduced the working hours to 72 hours. The fact that the Carrier chose to schedule those hours in 10 and 11 hour days between February 22 and 28, rather than creating six 12 hour days between February 23 and 28, is not a violation of Rule 28(a), which speaks of the assignment of consecutive workdays on the basis of a regularly scheduled number of hours between 8 and 12, with a caveat for the scheduling of holidays. Additionally there was no evidence presented that employees in these gangs were not timely informed of the fact that they would be working on February 22 as a result of the scheduling of the President's Day holiday, that the schedule was not posted, or that they did not receive all of the pay for the compressed work half to which they were entitled.

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.