

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43428  
Docket No. MW-42712  
19-3-NRAB-00003-140388**

**The Third Division consisted of the regular members and in addition Referee Paul Betts when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(Union Pacific Railroad Company**

**STATEMENT OF CLAIM:**

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

- (1) The Carrier violated the Agreement when it improperly changed the scheduled work days of Gangs 8515 and 8140 without proper notice beginning with the second half of March, 2013 and when it failed to comply with Rule 40(f) regarding observance of the March, 2013 Good Friday holiday (System File RC-1340U-601/1585674).**
- (2) As a consequence of the violations referred to in Part (1) above, all members of Gangs 8515 and 8140 shall ‘... each be compensated at the overtime rate of pay for working on the last day of their compressed work period, which should have been the day they observed their Holiday. Additionally, each Claimant must be allowed their full contractual amount of hours at the straight time rate of pay for their normal scheduled hours for the remaining days of their assigned compressed work period. Payment shall be in addition to any compensation they may have already received.”**

**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 issue before the Board is whether the Carrier improperly changed the compressed work schedule for Gangs 8510 and 8140 during the second half of March 2013, and whether the Carrier failed to comply with rule 40(f) regarding the March 2013 Good Friday holiday. The second half of March 2013 consisted of seventy-two hours of straight time and an eight-hour holiday. The Gangs worked March 23 – 30, 2013 and then observed the Good Friday holiday on March 31, 2013.

As indicated in the Statement of Claim, the Organization argues the Carrier violated Rule 40 – Alternative Work Periods. In relevant part, Rule 40 states:

“(a) With the election in writing from the 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. 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. The consecutive compressed half will commence on the first calendar day of the payroll period unless changed by mutual agreement between the Manager and a majority of the employees. 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 employees assigned to a gang working a consecutive compressed half arrangement will consist of the remaining days in the payroll period.

**(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 period 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 on the remaining days of the work week. Make-up time accumulated for this purpose to be worked at the applicable pro-rata rate will not exceed four (4) hours per –day on preceding regular workdays. The compressed work week will equal the number of hours worked as if the assignment was for a normal work week of forty (40) hours.**

**(c) Where it would be required to work a fraction of a day on a consecutive compressed work period arrangement under (a) or (b) in order to equal the number of hours in the period, respectively, the remaining hours will be distributed and worked throughout the compressed work period unless agreed to work a partial day at the end thereof...**

**(f) 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, Tuesday, Wednesday, Thursday, Friday or Sunday, 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).**

**(2) If a holiday falls on a Saturday, there will be no reduction in the amount of service hours ordinarily scheduled in line with the terms of this Agreement.**

**(3) With a signed election in writing by a majority of the employees subject to a compressed work period arrangement defined under paragraphs (a) and (b) and with the concurrence of the Manager,**

accumulated rest days provided herein may be used for workdays to make up time and observe the Thanksgiving and Christmas holidays, but not limited to these holidays, on their normal observed days. Under

this same approval process, rest days may be worked in exchange for time off on workdays immediately preceding and/or following such holidays. Any rest days worked under this provision will be in the pay period the holiday is observed and will be paid for at the straight time rate.

(4) Employees who qualify for holiday allowances under existing rules will be compensated eight (8) hours at the straight time rate for the holiday involved.

(5) If required to perform service during the hours at the end of the compressed work period observed as the holiday, employees will be compensated at the overtime rate...

(l) Employees 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 work period arrangement and said written notice will be posted at convenient locations accessible to the employees affected..."

The second half of March 2013 was an eighty-hour half which included the Good Friday holiday. The Organization argues the Carrier improperly changed the work schedule for the second half of March 2013 by having the Gangs work eight nine-hour days for the eight-day period of March 23 – March 30, 2013, and then observed the Good Friday holiday on March 31, 2013. The Union argues the last day of the half should have been observed as a day off with the remaining seven days being worked as two eleven-hour days and five ten-hour days plus the eight-hour holiday. The Organization argues the Gangs should have worked seven days in the half instead of the eight days they worked. The Organization also argues the Carrier failed to properly notify the Gangs of their changed workdays and rest days under 40(l) by failing to provide five days' notice, and also failed to provide the General Chairman with a description of the operational necessity requiring the nine-hour workdays.

The Carrier maintains they fully complied with Rule 40 by assigning work based on hours worked per day and by observing the holiday at the end of the compressed work period. The Carrier argues the Organization is attempting to rewrite the Agreement by restricting the Carrier to an eight-workday compressed half. Rule 40 does not support the Organization's contention that only eight workdays can be scheduled in a consecutive compressed half, and prior arbitration awards have settled the matter. The Carrier suggests the Organization is attempting to have the referee add new language to the Agreement through the arbitration process. The Carrier argues the work schedule for employees was available on or before February 20, 2013, and further argues the Organization failed to provide any evidence the schedule was not properly posted. The Carrier argues it provided the General Chairman with a description of the operational necessity requiring the nine-hour workdays although the notice was provided after the fact. The Carrier argues the notice to the General Chairman is informational only and is not required prior to the initiation of the nine-hour workdays.

Here, the second half schedule consisted of eighty hours total, with seventy-two hours of straight-time work and eight hours for the holiday. The Carrier subtracted the eight hours for the holiday and distributed the remaining seventy-two hours over an eight-day period with nine work hours per day, observing the holiday at the end of the compressed half. The Organization maintains that to satisfy Rule 40, the last day of the half should have been a day off, with two work days of eleven hours, five work days of ten hours, and eight hours of holiday pay.

After reviewing Rule 40, as well as the arguments and evidence provided, the Board finds the Carrier complied with Rule 40. The language of Rule 40 does not require a compressed half to be set based upon a fixed number of days, but rather on the assignment of consecutive workdays that are between eight and twelve hours. This principle has been upheld by numerous Boards (See PLB 6867, Awards 3, 18; Third Division, Award 40498). Here, the Carrier spread the seventy-two hours of work over eight consecutive days with nine hours of work per day, and with the holiday observed at the end of the half, complying with Rule 40. The Organization also argued the Carrier failed to properly notify the Gangs of their changed workdays and rest days under 40(1). However, there was no evidence provided by the Organization to support this assertion.

The Carrier acknowledges providing the General Chairman with late notice describing the operational necessity for the nine-hour work days, and therefore violated the Agreement due to this deficiency. However, the Board finds the Carrier in compliance with Rule 40, noting that all employees were properly notified, received all their hours, were properly paid, and had the holiday observed at the end of the half. As such, the Board sustains the charge as it relates to improper notification to the General Chairman in paragraph one (1) of the Statement of Claim, but deny the charge as it relates to paragraph two (2) of the Statement of Claim.

Although the Board may not have repeated every item of documentary evidence nor all the arguments presented, we have considered all the relevant evidence and arguments presented in rendering this Award.

### **AWARD**

Claim sustained in accordance with the Findings.

### **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 1st day of March 2019.