

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43748
Docket No. MW-45196
19-3-NRAB-00003-180734**

The Third Division consisted of the regular members and in addition Referee Richard K. Hanft when award was rendered.

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

PARTIES TO DISPUTE: (

**(Norfolk Southern Railway Company
(former Norfolk and Western Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier failed and refused to properly compensate regularly assigned Roadway Repairmen B. Voytek and S. Brewer on February 27 and 28, 2017 and March 1, 2, 3, 4 and 5, 2017 when they were required to work outside of their normal bulletined work schedule and when they were required to observe days off on March 6, 7, 8 and 9, 2017 (Carrier’s File MW-CHAR-17-04-ME-223 NWR).

(2) As a consequence of the violation referred to in Part (1) above, Claimants B. Voytek and S. Brewer shall be compensated as follows:

1. Claimant Brian Voytek -

**45.0 hours at the claimant’s respective overtime rate of pay
or:**

**67.5 hours at the claimant’s respective straight time rate of
pay for overtime hours worked “Feb 27 - March 5, 2017”**

**40 hours at claimant’s respective straight time rate of pay
for “March 6-9, 2017”**

‘Total - 107.5 Hours at Claimant’s respective straight time rate of pay.

- 2. Claimant Scott Brewer -
43.50 hours at the claimant’s respective overtime rate of pay of time or:**

65.25 hours at the claimant’s respective straight time rate of pay for overtime hours worked “February 27 - March 5, 2017”

40 hours at claimant’s respective straight time rate of pay for “March 6-9, 2017”

Total - 105.25 Hours at claimant’s respective straight time rate of pay.’ (Emphasis in original).”

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 matter concerns an interpretation of the Parties’ Agreement and a Memorandum of Agreement amending and pertaining thereto. Claimants were various headquartered Roadway Repairmen assigned exclusively to the S-2 Surfacing Gang to attend to the S-2 gang’s equipment repair needs.

The Parties entered into a Memorandum of Agreement on February 27, 2012 that provided the following:

“IV: MAKEUP TIME – Upon the effective date of this Agreement, NW-WAB Rules 50 and 51 and SOU Rule 31 are replaced with the following: With the concurrence of Management and a majority of affected employees, all members of a gang or crew will work extra hours outside of their regular assignment at the straight-time rate of pay in exchange for an equal number of hours to be taken off from the normal working hours of their regular working hours.”

In late February, 2017 the S-2 Surfacing gang voted, the record shows, to alter it's regularly awarded hours of work in exchange for a schedule working overtime hours one week for time off the next, in accordance with the provisions of the February 27, 2012 Memorandum of Agreement. Claimants in this matter voted in the minority against altering their awarded work hours pursuant to the Memorandum of Agreement. The majority vote of the affected employees, however, was implemented and the Organization now claims a contract violation on behalf of the employees. The Organization avers that the Claimants were forced to work outside their bulletined hours without being compensated for overtime at the rate of time and one-half and further that Claimants were precluded from working their bulletined assigned days depriving them of straight time compensation for the week the gang was off subject to the Makeup Time Agreement.

After thorough consideration, the Board finds no violation of the contract. Claimants here were and had been for quite some time assigned exclusively to repair the equipment on the S-2 Surfacing gang. Their assignments were, the record indicates permanent and various headquartered. They were, “Affected Employees” and “members of a gang or crew”. They were thus bound by the majority vote of the gang or crew. A majority of this Board finds that Claimants were compensated correctly in accordance with the February 27, 2012 Memorandum of Agreement.

The Board particularly notes that in the more than five years since the inception of the Makeup Time Rule it has conspicuously, consistently and repeatedly been applied to regard Equipment Repairmen as members of the crew or gang they are attached to without complaint. Past practice of how an Agreement has historically been interpreted by the parties is one of the strongest indications of the Parties' intent and understanding of contract language. For those reason, the claim is denied.

AWARD

Claim denied.

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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 16th day of July 2019.