

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44094
Docket No. MW-42782
20-3-NRAB-00003-190347**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles 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 Agreement was violated when the Carrier changed the work schedule for the employees assigned to Gangs 8568, 0068, 8769, 8778 and 8868 without proper written notice and when the Carrier failed to properly compensate the Claimants for working on June 4, 5, 6 and 7, 2013 and for being withheld from working on June 8, 2013 and for failing to pay per diem allowance for June 8, 2013 in connection therewith (System File D-1340U-301/1587936).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants shall each ‘... be compensated properly for working overtime on four (4) days June 4, 5, 6 and 7th 2013. Further, they shall be compensated for being denied work opportunity on the last day, June 8, 2013, which should have been the eighth day of the half. Specifically, the Claimants shall be compensated at their respective rates of pay for the difference between what they were paid and the overtime they were entitled to, or five and one half (5 ½) hours at one half the straight time rate of pay. They shall further be compensated for ten (10) hours at the straight time rate for work denied them on June 8th. They shall also be allowed one day of per diem [\$118.47 non-tax (sic)] for which they otherwise would have been entitled when management sent them home on a scheduled work day.’ ”**

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 Claimants were assigned to Gangs 8568, 0068, 8769, 8778 and 8868 on June 8, 2013 and jointly working on projects on the Carrier's rail network. During that time, these gangs were bulletined to and assigned alternative work schedules commonly referred to as a T-1 schedule. Under this type of schedule, the gangs first worked consecutive workdays during each half of a month and then observed consecutive rest days.

For the work period beginning June 1, 2013, Claimants were required to travel to a new work location. As such, they were scheduled to commence production work at the new location beginning on June 4, 2013. The previously released work schedule for the Claimants indicated that they would be required to work ten (10) hour shifts on the dates of June 4, 5, 6, 7 and 8, 2013 and then would observe their rest period. Claimants arrived to commence production on June 4, 2013. At the morning briefing, Claimants were informed that the work cycle was being curtailed by one (1) day and the last day of the half was to be June 7, 2013. It is the Organization's position that this was a change in schedule without five (5) days' notice in advance of the beginning of the compressed half (T-1) work period required by the collective bargaining agreement.

The Organization filed a timely claim on behalf of the Claimants. The claim was properly handled by the Organization at all stages of the appeal up to and including the Carrier's highest appellate officer. The matter was not resolved and is now before this Board for resolution.

As the moving party, it was the Organization's responsibility to meet its burden to prove by a preponderance of evidence that the Carrier committed the alleged violation(s). After careful review of the record, the Board finds the Organization met its burden. Accordingly, the Claimant shall be compensated for overtime pay for any hours worked in excess of ten (10) hours on the days in question.

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 11th day of August 2020.