

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45437
Docket No. MW-48040
25-3-NRAB-00003-230377

The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.

(Brotherhood of Maintenance of Way Employes Division –
IBT Rail Conference

PARTIES TO DISPUTE: (

(CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when, on Monday, May 3, 2021, the Carrier changed the scheduled forty (40) hour work week of the employes assigned to System Production Rail Gang 6XT5 by changing their designated starting time to begin at 6:30 A.M. and failed to properly compensate said employes at their overtime rates of pay for working the remaining hours of their rest day (System File SPG404621/21-80172 CSX).
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Pogose, J. Baker, A. Barilla, A. Blassingame, D. Brannan, J. Burnett, C. Carmody, D. Cavins, B. Collett, J. Collett, M. Comes, R. Dailey, D. Darby, M. Earlywine, M. Elliott, B. Fannin, D. Foster, M. Gambrel, J. Green, B. Greene, F. Gregor, B. Hammons, D. Hammons, H. Harvey, T. Holt, J. Horn, E. Horn, T. Hummel, C. Kennon, J. King, B. Langford, A. Marion, R. Mata, R. Mathews, K. Maynard, B. McNew, M. McQuinn, J. Moore, D. Payne, M. Pennington, C. Pires, D. Roach, J. Rogers, J. Rutherford, J. Schwartz, K. Slater, J. Toennisson, K. Watkins, D. Weber, J. Westerfield, R. Whitely, T. Williams, D. Yates, J. Yocum and J. Yonts ‘... shall now be compensated at their overtime rate for all hours worked on Monday, May 3, 2021 between 06:30 hours and 17:00 hours. ***’”

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 fifty-five (55) Claimants referenced above have established and held seniority within the Carrier's Maintenance of Way Department. The Claimants were assigned in various classifications within the Maintenance of Way and Structures Department at the time of this dispute.

Prior to the instant dispute, Claimants were assigned to various positions on System Production Rail Gang 6XT5, with a scheduled forty-hour work week consisting of four (4) consecutive ten-hour days (Monday through Thursday) followed by three (3) consecutive rest days (Friday, Saturday and Sunday). The starting time for each ten-hour workday was 7:30 PM, with the workday concluding at 6:00 AM on the following calendar day. On Monday, May 3, the Carrier changed the Claimants' scheduled forty-hour work week, establishing a new start time of 6:30 AM beginning that day. The Claimants reported for duty accordingly and worked until 5:00 PM at their respective straight time rates of pay.

This claim is based on the proper application of Rules 10 (40 Hour Work Week) and 11 (Overtime) and Section 6 of Appendix "S" Update System Production Gang Agreement of the collective bargaining agreement ("Agreement") dated June 1, 1999, between the parties. At issue is whether the Carrier violated the Agreement when it failed to compensate the Claimants at the applicable overtime rate(s) of pay for requiring them to work during the remaining hours of their rest day when establishing a new start time of 6:30 AM beginning Monday, May 3, 2021.

The Organization, essentially, contends that a rest day is defined as a 24-hour period and not a calendar day. Additionally, it is argued that the Carrier's change in the Claimants' schedule resulted in reducing the Claimants' three (3) consecutive rest day schedule by thirteen (13) hours and ultimately resulted in the Claimants working a fifth ten-hour day during their work week beginning April 26, without proper compensation.

Conversely, the Carrier maintains that it had the right to change the shift starting times. The Carrier argues Claimants are not due overtime for changing shifts pursuant to Rule 11 (e) and there was no violation because the change in start times did not increase the number of work days, nor did they result in a reduction of rest days for the Claimants.

By letter dated June 18, 2021, the Organization filed a timely claim on behalf of the Claimants. The claim was properly handled by the Parties 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 final adjudication.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. 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 has met its burden with respect to Rule 11 and Appendix "S" of the Agreement.

Appendix "S" Section 6, B. states:

B. The most desirable forty (40) hour work week for SPGs will be four (4) consecutive ten (10) hour days followed by three (3) consecutive rest days, with both Saturday and Sunday observed as rest days. The work week and rest days of SPGs may be changed upon five (5) working days notice and allowance of overtime, if applicable, consistent with the findings of Public Law Board No. 5810, Award 1."

In this case, the work week, including rest days prior to the shift change, was from Monday at 7:30 PM through the following Monday at 7:29 PM. In other words, the workweek at issue extended from Monday, April 26, at 7:30 PM until just before

their next regularly scheduled shift for the following workweek began, which would have been Monday, May 3, at 7:30 PM. The Carrier contends that because the Claimants were not assigned to work on Sunday, there was no contract violation. We disagree. The Board finds that rest days are defined as 24-hour periods of time. The relevant contract language refers to a rest *day*, not a rest *period*. The shift change dictated that the Claimants begin work at 6:30 AM on Monday (May 3) instead of 7:30 PM, thereby reducing the Claimants' three (3) consecutive rest day schedule by thirteen (13) hours and ultimately resulting in the Claimants working a fifth ten-hour day during their workweek which began on April 26, 2021.

The Gang members should have been paid at the time and one-half rate for May 3, but were not. This was a violation of Rule 11 (d) which states, as applicable here, that "Employees worked more than five (5) days (four (4) days for four (4) day gangs) in a work week shall be paid at time and one-half rates for work on the remaining days of their work weeks...." But for the change in shift, Claimants would not have worked on May 3, between the hours of 6:30 AM and 5:00 PM. They would have been at rest since the shift for the new week did not begin until 7:30 PM. Thus, Claimants worked a 5th day during their work week without proper overtime compensation. Accordingly, the Claimants shall be compensated in an amount equal to the difference between the straight-time rate of pay that they already received for May 3, 2021, and the applicable overtime rate for the hours that they worked that day.

AWARD

Claim sustained.

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 13th day of February 2025.

CARRIER MEMBER'S DISSENT

To

Third Division Award 45428; Docket 47962
Third Division Award 45431; Docket 47966
Third Division Award 45437; Docket 48040

(Referee Jeanne Charles)

A review of the Award issued by the Board indicates, without doubt, the Board erred in its decision when it asserted, incorrectly, that there was a violation by the Carrier of the Agreement when it changed the schedule of the System Production Gang employees from an evening shift to a day shift the subsequent week.

The parties entered into an agreement where it would be permissible to change the scheduled work times provided the following requirements were met: Notice is provided in advance of the change for the following work week; that any hours of service performed in excess of the forty hour week would be compensated at the appropriate rate; and that no additional overtime would be incurred as a result of the schedule change.

The facts of the cases are substantially undisputed. In each preceding week the employees performed service on four days, reporting Monday-Tuesday-Wednesday and Thursday, followed by three rest days of Friday-Saturday and Sunday, for a total of forty hours of service. The same number of hours is performed during the week of the new schedule. The question is whether payment of overtime compensation is warranted for the hours of service performed on Monday between the start of their first tour on Monday, and what would have been the start of their first tour, had the schedule remained the same.

Under the terms of Appendix "S", Section 27, Starting Times, the carrier is permitted to adjust the starting times of SPG, the relevant language is: ***Section 27- Starting Times: Restrictions on starting times between 4am and 11 am as provided for in Article IX of the Imposed Agreement in accordance with the provisions of Public Law 102-29 are eliminated. The remainder of Article IX of the Imposed Agreement in accordance with the provisions of Public Law 102-29 remains applicable with the following additions.***

A. When the starting time of a SPG is before 4:00 am. or after 11:00 am., each employee assigned to that SPG will receive a \$1.00 per hour differential for all hours worked while assigned to such starting time.

Based on Section 27 of Appendix "S" SPG there are no restrictions regarding when an SPG is required to start their workday. Further, Rule 11(e) of the June 1, 1999,

Agreement provides: *(e) There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight (8) paid for at overtime rates on holidays or for changing shifts, be utilized in computing the forty (40) hours per week, nor shall time paid for in the nature of arbitraries or special allowances, such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime.*

The Board has erred when it has implied, without evidence of language or practice, that requiring employees to start their tour earlier than the end time of their fourth, or final tour, the preceding week, should result in payment of overtime compensation. There is no language in the Agreement or the record which establishes, for the purposes of the shift change agreement, that a rest day comprises a twenty-four-hour period. The long-standing industry practice, in fact for any industry where shifts overlap from one day to the next, is that on occasion a permissible change of shift may lessen the time off prior to the next reporting time. However, where such a change of reporting time is permitted, as here, there is no provision for additional compensation when no additional hours of service are performed. A review of the Board decision indicates the Board goes outside of the intent and spirit of the language of the shift change agreement and creates an unsupportable basis for the result produced here.

The Organization submits in support of its argument the claims here are similar to PLB 5810 Award 1, which provides overtime in a situation where an employee must work on Sunday – clearly a rest day, which differs from the instant cases where the team has seventy-two hours (a/k/a three rest days) before returning to service.

With incorporation by reference to the Carrier submissions in these cases, it must be noted Claimants received three rest days (i.e. Claimants were not required to report on Friday Saturday or Sunday), performed no more than forty hours in a work week, and were properly compensated in accordance with the terms of the Agreement. A plain language reading of the Agreement in relation to past-practice would produce a declination of the instant claim, which would be consistent with previous practice. The rationale by the Board for the result produced here is not supported by the information in the record.

To produce such a contrary and unfounded Award, the Board has created a negative reliance on precedent and produced an inconsistent result. Both the Carrier and the Organization rely on consistent awards in the industry and the Carrier in this circumstance relied on Board decisions to make managerial decisions. To produce such a contrary conclusion creates the expectation that further disputes will ensue. The Carrier will implement the decision of this Board even though it is in contradiction of prior decisions and past practice on this issue.

The Board is limited to determine issues authorized by the RLA, including the requirement that the Organization establish a violation of the Agreement actually occurred, which the Carrier maintains the Organization has failed to do. As the Board has clearly erred in its analysis and conclusion, the Carrier dissents and asserts this Award should carry no weight in future disputes of like kind.

John K. Ingoldsby

John K. Ingoldsby
Carrier Member