

PUBLIC LAW BOARD NO. 5567

AWARD NO. 11  
NMB CASE NO. 11.  
UNION CASE NO.  
COMPANY CASE NO.

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY  
(former Missouri Pacific Railroad Company)

- and -

BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYEES

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier required the employees on System Bridge Gang No. 9300 to deviate from their regular Monday through Thursday (10 hours per day) workweek and instead required them to work 'split halves' from June 1 through 15, 1988.
2. As a consequence of the aforesaid violation, System Bridge Gang No. 9300 employees T. Ribbing, G. Ribbing, V. Kerperien, J. Burrows and J. Hayden shall each be allowed pay for twenty-four (24) hours at their respective time and one-half rates and forty (40) hours at their respective straight-time rates."

OPINION OF BOARD:

Claimants have each established and hold seniority in Carrier's Bridge and Building (B&B) Department. At the time this dispute arose, they were assigned to System Bridge Gang #9300. As a matter of background, Gang #9300 and a number of other System Bridge Gangs were regularly assigned with a work week of four (4) consecutive workdays of ten (10) hours each, with Friday, Saturday and Sunday as designated rest days. These workweek arrangements were in effect for some ten years under the terms of the August 1, 1974 Memorandum of Agreement:

"In recognition of the difficulty of some Maintenance of Way Employees in traveling from their work site in their homes on rest day weekends, and the need to improve efficiency of MofW gangs, IT IS AGREED:

1. At the election of a majority of employees working in a gang with the concurrence of the District Engineer on the District where such gang is working, a work week of four (4) days of ten (10) hours may be established with work week of Monday through Thursday, rest days Friday, Saturday and Sunday. By agreement between the

majority of employees working in such gang and the said District Engineer, three other consecutive rest days to be substituted therefor. The ten (10) hour day will include twenty (20) minutes for lunch without deduction of pay.

2. Rules in effect covering payment for service performed on rest days will apply.

3. Rules in effect covering payment for the performance of all overtime work other than on rest days is hereby amended to the extent that employees assigned to work as provided in paragraph 1 of this Agreement will be compensated at the overtime rate for work performed in excess of ten (10) hours on an assigned work day, except as provided in paragraphs 4, 5 and 6 of this Agreement."

In May 1988 Carrier concluded that it would be more efficient to assign various System Bridge gangs to work "split halves" ie., staggered work weeks consisting of eight (8) consecutive days of eleven (11) hours each, followed by seven (7) consecutive rest days. On that basis, Carrier urged the

individual members of System Bridge Gangs 9300, 9301, 9306, 9307, 9312 and 9316 to sign the following "Agreement":

"The undersigned employees, assigned to System Bridge Gang \_\_\_\_\_ hereby agree/disagree: To work halves with the work days not to exceed 8 consecutive days and the hours of work not to be less than 10 hours each work day".

Based upon what it claims was an 80% aggregate agreement rate among all of the employees on the various gangs, Carrier implemented the split halves arrangement on June 1, 1988. On July 13, 1988, the Organization submitted a claim alleging that: "The Carrier and Organization have not entered into an agreement that would allow such a working arrangement. The members of Gang #9300 have indicated to me that they did not agree to working split halves. Since there is no agreement, the Carrier is in violation of Rule 14 of our current working agreement...although deviation from an established Monday-Friday work week is permitted under the conditions set forth within Section 1(f) of Rule 14, Carrier did not discuss any operational problem with the Organization. Its failure to do so was unquestionably in violation of the Agreement."

Carrier denied the claim, submitting:

"At the outset, I know of no Agreement language which states that the 'normal working hours' for the members of this gang is ten (10) hours per day. It can also be assigned five (5) eight (8) hour days per week.

I am somewhat confused as to what hours the

gang actually worked June 1 through 9 and 13 through 15, 1988, for you to claim overtime. Did they work eight (8) hours straight time with the overtime after then, or did they work ten (10) hours and the overtime started?

Also, you should realize that the working hour arrangements were implemented after petitions were circulated with 80 percent of the employees agreeing to this type of arrangement. This practice has been in effect since back in 1985 on certain gangs.

I have reviewed Rule 14 of the current Agreement and do not find any agreement support for your claim. You are apparently trying to build your case on Rule 14(f) for the overtime portion and then trying to extend the claim for the remaining days. I cannot agree with this position.

Finally, you state that the Carrier and the Organization have not entered into an agreement to allow such practice. Since I do not find language restricting this practice and 80 percent of the employees are agreeable, I would suggest that you contact the Director of Labor Relations for an agreement."

The General Chairman responded to Carrier's denial asserting that of the signed petitions submitted, "only one applies to these Claimants. The other petitions are for other Bridge Gangs on the Southern District, particularly the B&B Concrete Gangs and the B&B Steel Gangs." The General Chairman went on to note that "Regardless of the number of employees agreeable to such arrangement, it was done without the General Chairman's agreement and is therefore not a valid working arrangement or agreement. I note that five of the men signed under objection to such arrangement. It was done with veiled threats of harassment if

the men did not agree to it."

In its final declination of the claim, Carrier asserted:

"You contend that the petitions for 9300/9306 are only applicable to this case; however, I cannot agree. The other petitions are for members of the System Bridge Gang Roster including employees on the same roster as the Claimants. As explained previously, this was a continuous operation, with the equipment being worked seven days a week. In other words, when Gang 9300 was off work, Gang 9306 was working the same project using the same equipment, and vice versa.

I do not agree that any veiled threats were made. If the harassment and veiled threats were made as you suggest, then the two Claimants named Rubbing would certainly not have felt the freedom to make their self-serving comments on the petition. In explaining to the employees that to achieve full employment, this type of arrangement was desired, as the Carrier only possessed sufficient equipment to work the gangs in succession to each other, then harassment has taken on a new meaning. Even though the petition was not dated, it was circulated prior to any arrangement."

The Parties conferred, as required, however, further efforts to resolve this dispute were not successful. Therefore, it has been placed before the Board for adjudication.

Rule 14 specifically stipulates that subject to the exceptions expressed therein, the Carrier shall establish a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7). The rule also provides that the work weeks may be staggered in accordance with the Carrier's operational requirements, but, whenever practical, the days off shall be Saturday and Sunday.

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Rule 14 (f) and the MOA of August 1, 1974 provide escape clauses through which Carrier can, with certain restrictions and conditions, establish a four (4) day work week, consisting of ten (10) hours each, with three (3) consecutive rest days off in each seven (7). Under the terms of those Agreements, Carrier does not have the reserved right unilaterally to impose "split halves". Nor may it bypass the certified exclusive bargaining representative of the craft or class of employees covered by the Agreement to negotiate with individual workers for deviations from the requirements of Rule 14 and the MOA of August 1, 1974. See NRAB Third Division Awards 522, 946, 2602, 3256, 4850, 5444, 6254, 11958, 20237, 21048 and 23461. There is no doubt that Carrier violated the Agreements in this case. The appropriate remedial damages are payment of twenty-four (24) hours to each Claimant at the time and one-half rate and the claims are sustained to that extent.

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AWARD


Claim sustained to the extent indicated in the Opinion.

Carrier shall implement this Award within thirty (30)  
days of its execution by a majority of the Board.



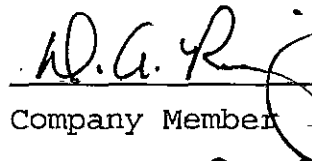
Dana Edward Eischen, Chairman

Dated at Ithaca, New York on April 19, 1995



Union Member

Dated at Chicago, IL  
on April 25, 1995



Company Member

Dated at Omaha, Nebraska  
on April 24, 1995