

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 131
UNION PACIFIC RAILROAD COMPANY) Award No. 132
_____)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. A. Ring, Carrier Member

Hearing Date: February 7, 2008

STATEMENT OF CLAIM:

- (1) The Agreement was violated when the Carrier improperly changed the consecutive compressed half work schedule for all employees assigned to System Gangs 8563, 8553, 8583, 8564, 8554, 8562, 8582 and 8552 for the first half of May 2005 and when it failed and refused to properly compensate said employees for the additional eight (8) hours of work they performed in said half (System File C-05333-104/1428518).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants, all employees assigned to System Gangs 8563, 8553, 8583, 8564, 8554, 8562, 8582 and 8552 shall now each be compensated for the difference in pay between the straight time which they received and the overtime which they should have been paid for eight hours worked during the first half of May.

FINDINGS:

Public Law Board No. 6302 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

At the time the claim arose, System Gangs 8563, 8553, 8583, 8564, 8554, 8562, 8582 and 8552 were working compressed halves. Under the compressed schedule they were to work 80 hours during the first half of May 2005 and 88 hours during the second half. The 88 hours was arrived at by subtracting from the 96 hours they would normally work under the schedule for the second compressed half in May, 8 hours for the Memorial Day holiday. The 80 hours during the first compressed half were to be worked 10 hours per day for eight days. The employees,

however, with management concurrence, voted to work an additional hour each day, thereby totaling 88 hours for the first half and work only 80 hours in the second half, thereby lengthening their Memorial Day holiday by one day.

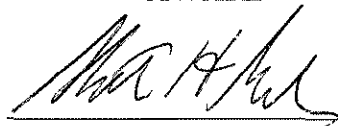
The parties agree that the Agreement allows the employees to vote, with the agreement of management, to lengthen a holiday by reallocating time that would be worked on a day before the holiday to other days within the same half. The Organization contends, however, that the Agreement forbids reallocating the time across days worked in the other half within the same month. The Organization urges that employees frequently transfer onto or out of a gang at the end of the first half in a month and, consequently, a reallocation over a different half from the half in which the extra day off is to be taken can result in shorting employees of hours and/or compensation. Carrier contends, however, that it is in keeping with the intent of the Agreement to reallocate hours across the other half in the same month where the reallocation is done at the request of the employees and for the employees' benefit.

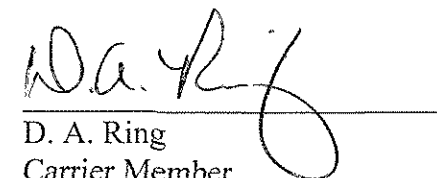
We believe that, everything else being equal, clarification of the Agreement to determine whether it forbids employee-initiated and employee-supported reallocation of hours to a different half within the same month to lengthen a holiday is better left to negotiation between the parties rather than to decree by a Board. Rather than make a sweeping pronouncement that would preempt the parties' negotiations, we choose to decide this case solely on the particular facts presented.

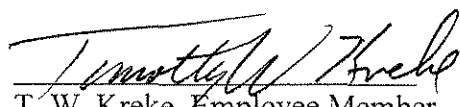
In the instant case, no employees were shorted hours or time. Moreover, during handling on the property, Carrier presented a statement from the Track Supervisor that the agreement to work one extra hour each day in the first half of May to get an extra day at the end of the Memorial Day holiday was approved by 100% of the employees on the affected gangs. This statement was unrefuted on the property. The instant case thus presents a situation where the reallocation of hours was done at the request of the employees, for the benefit of the employees and was agreed to unanimously by the employees. Under these circumstances, we believe that the Organization is equitably estopped from claiming that the reallocation violated the Agreement.

AWARD

Claim denied.


Martin H. Malin, Chairman


D. A. Ring
Carrier Member
July 7, 2008
Dated at Chicago, Illinois, June 25, 2008


T. W. Kreke, Employee Member
Employee Member
July 7, 2008