

PUBLIC LAW BOARD NO. 6867
AWARD NO, 3
CASE NO. 3

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

PARTIES

TO DISPUTE:

and

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier improperly changed the compressed work period for System Gang 9049 for the second half of May 2002 to a compressed period of May 16 through 23, 2002 and when it failed and refused to properly compensate the employees assigned to System Gang 9049 for the second half pay period for May, 2002 (System File UPKB-6784T/1326740).
- (2) As a consequence of the violation referred to in Part (1) above, the employees of System Gang 9049 shall now '*** be compensated for the differential in pay, from that of straight time and overtime rates, for all hours worked on May 23, 2002 and be compensated for the eleven hours of straight time they were denied, the opportunity to work, during the remaining days of the work period.”

FINDINGS:

Upon the, whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the

Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

This claim involves the application of Rule 40, Alternative Work Periods, to System Gang 9049, a production crew working a consecutive half workweek arrangement, during the second half of May, 2002 when the Memorial Day holiday fell. The applicable portions of Rule 40 appear below.

(a) With the election in writing from the majority of the employees working on a project and with the concurrence of the appropriate Manager, a consecutive compressed half work period may be established where operations permit. The consecutive compressed half will consist of consecutive workdays that may be regularly assigned with eight (8) or more hours per day (i.e. 8, 9, 10, 11 or 12 hour workdays) and accumulated rest days. The consecutive compressed half will commence on the first calendar day of the payroll period unless changed by mutual agreement between the Manager and a majority of the employees. The consecutive compressed half arrangement will equal the number of hours worked as if the assignment was for a normal half with 8-hour workdays. Accumulated rest days for employees assigned to a gang working a consecutive compressed half arrangement will consist of the remaining days in the payroll period.

(c) Where it would be required to work a fraction of a day on a consecutive compressed work period arrangement under (a) or (b) in order to equal the number of hours in the period, respectively, the remaining hours will be distributed and worked throughout the compressed work period unless agreed to work a partial day at the end thereof.

(f) Observance of holidays will be handled as follows:

(1) Unless agreed otherwise by a majority of the gang members and the appropriate Manager, if a holiday falls on a Monday, Tuesday, Wednesday, Thursday, Friday or Sunday, the holiday will be observed at the end of the compressed work period and the amount of service hours ordinarily scheduled in line with the terms of this Agreement will be reduced by eight (8).

(5) If required to perform service during the hours at the end of the compressed work period observed as the holiday, employees will be compensated at the overtime rate.

(l) Employees working a compressed work period under paragraph (a) will have their workdays and rest days set forth in writing a minimum of five (5) workdays in advance of the beginning of the work period arrangement and said written notice will be posted at convenient locations accessible to the employees affected.

(p) The provisions of the rule apply to a gang as a whole and not individual employees and is designed to improve productivity, and the composition of employee's rest hours to afford employees a greater opportunity for extended visits to their homes. No claims will be filed on behalf of any employees subject to this rule. Except as provided herein, existing practices, understandings, or any other Agreements regarding the assignment of work periods are not modified.

This dispute involves the issue of whether Claimants, members of System Gang 9049, were assigned to an eight (8) day compressed half as alleged by the Organization, or a ten (10) hour Workday compressed half under Rule 40(a) as asserted by Carrier. The importance of this,

distinction, for purposes of this claim, concerns the scheduling of the Memorial Day holiday during the second half of May, 2002. Rule 40(f)(1) requires 'that a holiday be observed at the end of the compressed work period and that the amount of service hours during the half be reduced by the 8 hours attributable to the holiday. Rule 40(f)(5) requires that employees required to work on the day observed as a holiday will receive compensation at the overtime rate.

Employees who elect to work a consecutive compressed half, as System Gang, 9049 did over one year earlier, will have work periods of either 80, 88 or 96 hours depending on the number of work days in the half. In this case, the second compressed half of May, 2002 had 96 hours scheduled, 8 of which were attributable to the holiday. Employees were scheduled to work a nine day compressed half with 8 eleven hour days, May 16-23, 2002; the holiday was observed on the ninth day, May 24, 2002, with employees receiving 8 hours of holiday pay at the straight time rate for that day.

The Organization contends that the holiday should have been scheduled for May 23, the end of the compressed work period under Rule 40(f)(1), and the remaining 88 hours spread over the prior seven day compressed half. By Carrier scheduling the holiday for May 24, and requiring employees to work on May 23, which they should have observed as their holiday, the Organization believes that employees lost the 11 hours of work from May 23 which should have been distributed among the prior 7 days, as well as the overtime rate for work performed on May 23, 2002. The Organization also asserts that Carrier failed to comply with the written prior notice requirement in Rule 40(1) for effecting a change in the schedule of System Gang 9049, relying on Third Division Awards

28307, 29542, 35066; Public Law Board 6206, Award 1 Remedy Ruling. It posits that Carrier's failure to produce a copy of the original written election by the gang undermines its assertion that what was selected was 10 hour days rather than an eight consecutive day workweek.

Carrier notes that the Organization is attempting to have the Board rewrite Rule 40 to be more restrictive concerning its managerial right to assign work as it deems appropriate, which the Board is not empowered to do, citing Third Division Awards 20383, 27931, 31999. Carrier states that there must be specific language in the Agreement to restrict this inherent Carrier right, and asserts that Rule 40 does not support the Organization's interpretation. It points out that Rule 40(a) does not say anything about the number of days that can be scheduled in a consecutive compressed half, only that employees can elect to work 8, 9, 10, 11 or 12 hour workdays. Carrier points to a posting for System Gang 9049 which states that it currently works compressed halves, with consecutive 10 hour workdays, and payroll records indicating this to be Claimants' regular schedule.

Carrier argues that the Organization's interpretation that 88 hours should have been spread over 7 workdays would require a work schedule of 12.5 hours per day, which is not permitted by the rule. Carrier further notes that under Rule 40, employees can elect to be governed by Rule 40(a), compressed halves, or 40(b) compressed workweeks, and do not vote on the number of workdays they wish to work. It asserts that it is the Organization's burden to establish the original election was for an 8 day workweek, which it failed to sustain, relying on Second Division Award 9895; Third Division Awards 26033, 27851, 27895. Carrier refers to Rule 40(p) in reminding the Board that the rule is designed, in part, to improve

productivity and efficiency, and that Carrier has always maintained its right to assign work to be accomplished in the most productive manner. It concludes that its holiday and work assignment and pay for the second half of May, 2002 - a 9 day half where employees worked eight 11 hour days and observed the holiday on the ninth day - was in full compliance with its Agreement commitments.

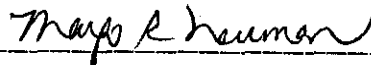
A careful review of the record and arguments of the parties convinces the Board that the Organization's claim for additional compensation for the second half of May, 2002 must be denied. The Organization's position is dependent upon a showing that what was elected by System Gang 9049 and concurred in by the Manager under Rule 40(a) was a compressed half consisting of 8 workdays. It has failed to show that Rule 40(a) contemplates a compressed half of any fixed number of days. Rather, the evidence substantiates that System Gang 9049 was working a compressed half consisting of 10 hour workdays, was bulletined as such, and that Carrier did not give up its right to schedule more than 8 workdays during a compressed half of 88 or 96 hours. In the instant case, Carrier scheduled the 96 hour second compressed half in May, 2002 to be worked over nine workdays, with the ninth 'being designated as the holiday and the other eight comprised of 11 hour days.

The Organization has not met its burden of proving that this action violated any of the provisions of Rule 40, including Rule 40(1) with respect to the required written advance notice of change of schedule. In this case the Board agrees with Carrier that there was no schedule change for System Gang 9049 requiring written notice so long as the 10 hour workday compressed half was maintained. Carrier's agreement to Rule 40 did not restrict its right to assign work to be accomplished in a productive

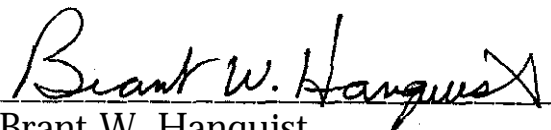
manner or to promote efficiency, so long as its specific terms are complied with. We find that they were in this case and, accordingly, the claim is denied.

AWARD:

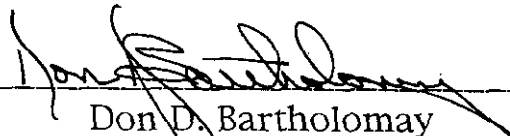
The claim is denied.



Margo R. Newman
Neutral Chairperson



Brant W. Hanquist
Carrier Member



Don D. Bartholomay
Employee Member

Dated: May 30, 2006

Dated: 5-30-06