

PUBLIC LAW BOARD NO. 6867

AWARD NO. 18

CASE NO. 18

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 arbitrarily established a new compressed work cycle of nine (9) workdays, from the previously established eight (8) days, on July 24, 2001 for all employees assigned to System Gangs 9049, 8564, 8584, 8570, 8575, 8579, 9002, 9033, 9062, 9067, 9068, 9071, 9082, 9001, 9023 and 9061 (System File W-0140-151/1287008).

(2) As a consequence of the violation referred to in Part (1) above, each employee assigned to System Gangs 9049, 8564, 8584, 8570, 8575, 8579, 9002, 9033, 9062, 9067, 9068, 9071, 9082, 9001, 9023 and 9061 shall now each '... be allowed overtime at the time and one-half rate for all hours worked for all services rendered on the ninth (9th) work day of their scheduled eight (8) day assignment for the last half of July 2001."

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 the members of sixteen system gangs who were working consecutive half workweek arrangements during the second half of July 2001. What is in dispute is Carrier's assignment of work on nine rather than eight work days. 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.

(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.

This dispute involves the issue of whether Claimants, members of the various system gangs noted in the claim, 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 where the compressed half involved included 96 work hours, concerns whether Carrier had the right to schedule Claimants to work nine 10 hour days with the remaining 6 hours distributed over those nine days or was required to schedule Claimants to eight 12 hour days. The time period in issue is the second half of July, 2001. The claim seeks overtime pay for the ninth work day in the half.

The correspondence on the property establishes that Carrier took issue with the inclusion of System Gang 9126, which it said did not exist, and System Gangs 8570, 8575, 9025, 9049 and 9067 which it provided labor distribution reports to show worked 8 days or less within the half. Carrier also raised the issue of the Organization's filing of duplicate claims for System Gangs 8553, 8554, 8563 and 9056. In a letter dated July 2, 2002, the Organization attempted to withdraw the portion of the claim dealing with System Gangs 9126, 8553, 8554, 8563 and 9056; Carrier rejected such attempt arguing that the claim should be dismissed on the basis of these duplicate claims.

In the initial denial of the claim on November 15, 2001 Manager Tausz states that the payroll history of these gangs reveal that they have been working compressed halves with regularly assigned ten (10) hour days. He sets out the their schedules to include (1) working eight 10 hour days during an 80 hour half, (2) eight 11 hour days during an 88 hour half (composed of eight 10 hour days and the remaining 8 hours spread across the prior work period), and (3) in a 96 hour half, being assigned to work nine 10 hour days with either the remaining 6 hours spread across each of the nine days @ 40 minutes per day, or one hour additional in each of six days making a total of six 11 hour days and three 10 hour days. Tausz concludes that such work assignments complied with Rule 40, noting that there is not a contractually reserved number of work days or rest days for employees working a compressed half. During the claims processing Carrier indicated that the gangs work histories were available upon the Organization's request.

The record on the property contains copies of some 49 job bulletins for various system gangs (including twelve involving the Claimants' gangs). These bulletins list Friday/Saturday, Saturday/Sunday or Friday, Saturday & Sunday as rest days. The comment section on most of them includes the following language: "Gang is subject to alternate work week conditions under PEB 219." Some 27 bulletins (11 of which relate to gangs in this claim) also contain comments indicating that the gang works the amount of hours in the half in 8 days. Of the other 22 vacancy bulletins, some state that the gang is presently working consecutive 10 hour days with rest days at the end of the half.

Carrier's response to these postings on the property was that the bulletin clerk made a mistake and that such courtesy comments are

inconsistent with the interpretation of Rule 40(a) and cannot change the meaning of the Agreement. It pointed out that there are so many bulletins posted that they could not all be reviewed by managers or Labor Relations to assure their accuracy. Carrier noted that the gangs were all bulletined as five days per week, 8 hours per day with designated rests days, and contended that it is not able to bulletin a compressed half gang, since that is only an option available to the gang by election after it is bulletined in the normal course.

The record does not contain the original election form of any of the system gangs involved in this claim. Carrier did submit copies of the generic form used to make such election. Such form has a space to indicate agreement to working a compressed half under Rule 40(a), a compressed work week of four 10 hour days under Rule 40(b), or to accumulate rest days due to a forthcoming holiday pursuant to Rule 40 (f-3). There is a space where each gang member writes his name, social security number and indicates either his agreement or disagreement with the proposed Rule 40 alternate work week arrangement.

A careful review of the record and arguments of the parties, as well as prior Board precedent, convinces us that the Organization's claim for overtime compensation for the ninth day worked by the system gangs in the second half of July, 2001 must be denied. This case is similar in many respects to Case No. 17 recently decided by this Board, which dealt with the propriety of Carrier scheduling work during the same period on nine consecutive workdays for a different system gang. Since the arguments of the parties and some of the underlying records are substantially the same, they will not be repeated herein and their recitation in Public Law Board No. 6867, Award 17 is incorporated in this decision. We confirm our

findings with respect to the effect of the comments contained in some of the bulletins, as well as the absence of the specific election forms for the gangs in issue in this case. Additionally, we find no evidence in this record to support a Rule 40(1) violation as there is nothing establishing that there was a schedule change requiring written notice. Carrier asserted without rebuttal that Claimants were informed of their schedule for the second half of July, 2001 before they left for their rest days during the first half of July.

However, unlike Award 17, there is nothing in this case showing that Carrier did not schedule these gangs during the second half of July, 2001 in compliance with its assertion that they were regularly scheduled for 10 hour days, with the remaining hours distributed throughout the work period. While payroll records were not included, they were made available to the Organization upon its request (there is no evidence that such request was made) and were summarized by the manager in his initial denial of the claim. Each 80 hour work period was scheduled as eight 10 hour days. Each 88 work period was scheduled as eight 10 hour days with the remaining 8 hours equally distributed to make eight 11 hour days. This 96 hour work period was scheduled as nine 10 hour days with the remaining 6 hours distributed over the nine day work period. The Organization did not prove that the Claimants were scheduled for other than six 11 hour days and three 10 hour days or nine 10 hour and 40 minute days during the second half of July, 2001. Accordingly, the Organization did not establish a violation of Rule 40(c) in this case as was found in Award 17.

This Board has held in both Award Nos. 3 and 17, that the plain language of Rule 40(a) does not contemplate a compressed half of any

fixed number of days, but speaks of the assignment of consecutive workdays on the basis of a regularly scheduled number of hours between 8 and 12. Thus, we find that the Organization has not met its burden of proving that Carrier's assignment of Claimants to work a ninth day in the second half of July, 2001 was in violation of Rule 40(a). Based upon such finding on the merits, the Board concludes that it is unnecessary to address Carrier's procedural argument that the Organization is not permitted to amend part of its claim by withdrawing reference to certain gangs and that the claim should be dismissed as duplicative of other claims advanced by the Organization.

AWARD:

The claim is denied.

Margo R. Newman

Margo R. Newman
Neutral Chairperson

Brant W. Hanquist

Brant W. Hanquist
Carrier Member

Timothy W. Kreke

Timothy W. Kreke
Employee Member

Dated: 4-23-08

Dated: April 23, 2008