

PUBLIC LAW BOARD NO. 6867

AWARD NO. 21

CASE NO. 21

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 half work schedule for all employees assigned to System Gangs 9072 and 9082 in the second half of February 2005 and failed to allow said employees to observe the Presidents' Day holiday pursuant to Rule 40(f) (System File C-0543-102/1423771).

(2) As a consequence of the violation referred to in Part (1) above, the Claimants, all employees assigned to System Gangs 9072 and 9082 shall now each '... be allowed overtime compensation at their respective applicable rates of pay for all hours worked on February 28, 2005. Each Claimant must also be allowed nine (9) hours of compensation that they were not allowed to work on their scheduled work day of February 21, 2005, without reason. ***"

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 is identical to that decided in Case No. 20, and involves the application of Rule 40(f) to two different system gangs also working consecutive half workweek arrangements, during the second half of February, 2005 when the Presidents' Day holiday fell. The applicable portions of Rule 40 appear below.

RULE 40 - ALTERNATIVE WORK PERIODS

(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).

(4) Employees who qualify for holiday allowances under existing rules will be compensated eight (8) hours at the straight time rate for the holiday involved.

(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.

This dispute involves Carrier's scheduling of the Presidents' Day holiday during the second half of February, 2005 for each of these named gangs. Rule 40(f)(1) requires that a holiday be observed at the end of the

compressed work period "unless agreed otherwise by a majority of gang members and the appropriate Manager," 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.

In this case, Claimants observed their rest days at the beginning of the compressed half, worked during the end of the half, and were regularly scheduled for nine hour workdays. The Presidents' Day holiday fell on Monday, February 21, 2005, which was normally the first day of their compressed work period. During the last half of February, 2005 Carrier scheduled Claimants to work from February 22 through February 28, 2005, and Claimants observed and were paid 8 hours for the holiday on February 21 rather than on the last day of their work cycle. The issue in this case, as it was in Case No. 20, is whether there was agreement to observe the holiday at the beginning, rather than the end, of the compressed work period.

The record on the property contains a written statement from Manager of Track Programs Darrel Neuner dated March 22, 2005 which states: "Gangs 9072 and 9082 are part of a large group of gangs that were working together on the same project. In a majority vote of all the gangs they did agree to take their Holiday on the first day of the Compress 2 schedule." The Organization took issue with this contention by stating in its subsequent appeals that its information from Claimants is that no vote was taken and that, in the absence of Carrier furnishing copies of the vote sheets, its information is more accurate.

Since the arguments of each party are identical to those made in

Case No. 20 and set forth by this Board in Award 20, they will not be repeated; their recitation in Public Law Board 6867, Award 20 is incorporated herein. A careful review of the record and arguments of the parties convinces the Board that the Organization has failed to meet its burden of proving that Carrier violated Rule 40(f)(1) when it scheduled the Presidents' Day holiday on the first rather than the last work day of the compressed half in this case. While the Organization asserted that no agreement of a majority of gang members was obtained to change the date the holiday was celebrated as required by Rule 40(f)(1), it did not present any statements from Claimants to that effect after Carrier had included with its denial the written statement of the manager concerning what occurred. Unlike the language in Rule 40(a) requiring the election to work a compressed to be in writing, there is nothing contained in Rule 40(f)(1) requiring that the agreement to change when the holiday is scheduled must be in writing. Thus, Carrier's failure to produce any written votes does not call for an adverse inference or defeat its position that a vote was taken to support the change. As we concluded in Award 20, at best, the record contains an irreconcilable dispute of fact with reference to whether there was an agreement under Rule 40(f)(1) to vary when the holiday was observed, which the Board is not empowered to resolve, and which requires that the claim be denied. Third Division Award 33487.

AWARD:

The claim is denied.

Margo R. NewmanMargo R. Newman
Neutral ChairpersonBrant W. HanquistBrant W. Hanquist
Carrier MemberTimothy K. KrekeTimothy K. Kreke
Employee MemberDated: 4-23-08Dated: April 23, 2008