

PUBLIC LAW BOARD NO. 6867

AWARD NO. 22

CASE NO. 22

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 and invalidly established a new compressed work cycle of nine (9) workdays, from the previously established eight (8) days, on July 23, 2001 for all employees assigned to System Gang 8519 (System File W-0140-154/1287001).

(2) The Agreement was violated when the Carrier arbitrarily and invalidly established a new compressed work cycle of nine (9) workdays, from the previously established eight (8) days, on July 23, 2001 for all employees assigned to System Gang 8553 (System File W-0140-155/1287002).

(3) The Agreement was violated when the Carrier arbitrarily and invalidly established a new compressed work cycle of nine (9) workdays, from the previously established eight (8) days, on July 23, 2001 for all employees assigned to System Gang 8554 (System File W-0140-156/1287003).

(4) The Agreement was violated when the Carrier arbitrarily and invalidly established a new compressed work cycle of nine (9) workdays, from the previously

established eight (8) days, on July 23, 2001 for all employees assigned to System Gang 8563 (System File W-0140-157/1287004).

(5) The Agreement was violated when the Carrier arbitrarily and invalidly established a new compressed work cycle of nine (9) workdays, from the previously established eight (8) days, on July 23, 2001 for all employees assigned to System Gang 9056 (System File W-0140-162/1287005).

(6) As a consequence of the violation referred to in Part (1) above, the employees assigned to System Gang 8519 shall now:

'1. Each employee must 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.

2. Each employee must be allowed their full contractual amount of hours at the straight time rate for their normal scheduled hours for the remaining eight (8) days of their assignment as established by rule 20.'

(7) As a consequence of the violation referred to in Part (2) above, the employees assigned to System Gang 8553 shall now:

'1. Each employee must 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.

2. Each employee must be allowed their full contractual amount of hours at the straight time rate for their normal scheduled hours for the remaining eight (8) days of their assignment as established by rule 20.'

(8) As a consequence of the violation referred to in Part (3) above, the employees assigned to System Gang 8554 shall now:

'1. Each employee must 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.

2. Each employee must be allowed their full contractual amount of hours at the straight time rate for their normal scheduled hours for the remaining eight (8) days of their assignment as established by rule 20.'

(9) As a consequence of the violation referred to in Part (4) above, the employees assigned to System Gang 8563 shall now:

'1. Each employee must 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.

2. Each employee must be allowed their full contractual amount of hours at the straight time rate for their normal scheduled hours for the remaining eight (8) days of their assignment as established by rule 20.'

(10) As a consequence of the violation referred to in Part (5) above, the employees assigned to System Gang 9056 shall now:

'1. Each employee must 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.

2. Each employee must be allowed their full contractual amount of hours at the straight time rate for their normal scheduled hours for the remaining

eight (8) days of their assignment as established by rule 20."

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 is a consolidation of five separate claims involving the application of Rule 40, Alternative Work Periods, to the members of five different system gangs, working a consecutive half workweek arrangement, during the second half of July 2001. What is in issue is Carrier's assignment of work based 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 five 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 July 23-31, 2001.

As noted, this claim is a consolidation of five claims handled separately on the property. Carrier raises two procedural issues in this case. First, on the property, Carrier maintained that the claims were duplicative of others filed and processed by the Organization, which is

grounds for their dismissal, citing Third Division Award 27454 and Second Division Awards 11999 and 12922. In its submission to the Board, Carrier notes that the Organization unilaterally consolidated these cases before the Board without seeking its agreement, and argues that the arbitrary consolidation of these claims violates Section 3 First (i) of the Railway Labor Act since the grievance that was progressed to the Board is different from what was handled in the usual manner on the property, and requests that the claim be dismissed on that ground, relying on Third Division Awards 30274, 36116, 34049.

With respect to Carrier's procedural objections, the record reflects that when Carrier pointed out the duplication of claims to the Organization in the claim progressed in Case 18 of this Board, the Organization wrote a letter dated July 2, 2002 stating that the filing of duplicate claims was a typographical error and requesting withdrawal of Gangs 8553, 8554, 8563 and 9056 from that case relying on the pendency of the four claims in this case. Carrier's response rejects the attempt to withdraw the claims in Case 18 and asserts that both claims should be dismissed. This correspondence is included in the on property handling of the instant cases. The Board rejects this procedural basis for dismissing the claims involving Gangs 8553, 8554, 8563 and 9056, since, upon discovery of the duplication, the Organization withdrew the second claims to assure that duplicate claims were not progressed, and these gangs were not part of the claim forwarded to the Board in Case 18 or decided in Award 18. Thus, no pyramiding or compounding of claims has occurred before the Board, distinguishing the facts of this case from those cited by Carrier.

The second procedural objection raised by Carrier is that, by

unilaterally consolidating these five cases, the Organization has arbitrarily and impermissibly progressed a different claim than that which was handled "in the usual manner" on the property. The procedure utilized by the Organization in consolidating these separate claims may, under certain circumstances, form the basis for their dismissal, Third Division Award 30274. Although the Board noted in Third Division Award 34049, that it "looks askance at dissimilar claims being combined into one arbitration proceeding," where the claims are sufficiently similar their consolidation is found to be proper. Since these claims have substantially similar records and raise the same underlying issues, we find no basis for dismissing them due to their unilateral consolidation before the Board. Third Division 34049.

The extensive records in these five cases are not only substantially similar, but they mirror, for the most part, the correspondence considered by this Board in Awards 17 and 18. Each on property file contains the same claim language and arguments by the Organization in support of its position that the gangs agreed to work eight (8) days in the compressed half and that Carrier's scheduling them for a ninth day during the second half of July, 2001 violated Rule 40(a)(c) and (l). The responses and arguments of Carrier in each case consistently deny that Rule 40(a) permits the scheduling of compressed halves by the number of days, rather than the number of hours worked each day, posits that each gang had been regularly scheduled for 10 hour days, and concludes that the scheduling of these gang members to work nine days during the second half of July, 20001 complies with Rule 40(a)(c) and (l).

The records on the property also contain copies of numerous 2001 job postings for various system gangs, including some for the system

gangs in issue, where the bulletin indicates rest days of Saturday and Sunday with various work hours, and the comment section includes the following language: "Gang is subject to alternate work week conditions under PEB 219." The Organization presented bulletins with additional comments including "Works amount of hours in 1/2 in 8 days." Carrier presented some bulletins for the gangs in issue with the following comments: "Gang is working last eight days of the half with rest days at the beginning of the 1/2, hours to be determined by the numbers of hrs. required in the half."

Carrier's response to these bulletins on the property was that the bulletin clerk had made a mistake and could not change the interpretation of Rule 40(a) by such an error. 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 gang was bulletined as five days per week, 8 hours per day with Saturday and Sunday as 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 records do not contain the original election forms of any of the five system gangs. As in Case 18, Carrier submitted copies of the generic form used to make such election.

Additionally, with the exception of the file concerning System Gang 9056, the correspondence on the property contains payroll records for the two work cycles in June and the two work cycles in July, 2001, establishing that gang members worked eight 10 hour days when the cycle had 80 work hours, eight 11 hours days when the cycle had 88 work hours, and eight 11 hour days and one 8 hour day on the ninth day during

the second half of July, 2001. In each such case Carrier made the statement that the gang involved "elected to work eight days at 11 hours and work the last day at 8 hours to provide an early quit for themselves." There was no rebuttal of this statement by the Organization or contradictory evidence submitted on this point. The correspondence in the file concerning System Gang 9056 contains no payroll records establishing what schedule was worked during the second half of July, 2001, and no assertion by Carrier of any agreement to work 8 hours on the ninth day.

A careful review of the record reveals that the arguments made by both the Organization and Carrier in Case 17, as set forth specifically in Award 17 of this Board, are identical to those presented in the files in this case. Accordingly, they will not be repeated herein and their recitation in Public Law Board 6867, Award 17 is incorporated in this decision. After consideration of the arguments of the parties, as well as prior Board precedent, the Board is convinced that the Organization's claim for additional compensation for the second half of July, 2001 for each of the five gangs must be denied. For the reasons stated in Awards 17 and 18, we reaffirm our holding 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 violated the provisions of Rule 40(a) by assigning a ninth workday in the second half of July, 2001.

The payroll records in this case support Carrier's assertion that Claimants' were regularly scheduled for 10 hour work days since a

schedule of eight 10 hour days during an 80 hour half and eight 11 hour days during an 88 hour half is consistent with that position. Similar to the situation in Case 17, System Gangs 8519, 8553, 9554 and 8563 herein were scheduled for eight 11 hour days and one 8 hour day during the last half of July, 2001. However, unlike our finding in Award 17 that there was no evidence of an agreement by the gang to working a partial day under Rule 40(c), these records contain Carrier's assertion that the gangs did make an election to work the last day of the half as a partial day of 8 hours in order for them to be able to quit early, and the Organization offered nothing to contradict that allegation. Thus, we find that Carrier's assignment of eight days at 11 hours and one day at 8 hours during the second half of July, 2001 was in compliance with the requirements of Rule 40(c). The absence of any evidence that Gang 9056 was assigned to work a schedule inconsistent with its regularly scheduled 10 hours/day during the second half of July, 2001 requires a similar finding.

Finally, since there is no evidence in the record that there was a schedule change for these five system gangs requiring written notice or that Claimants were not informed of their work schedule for the second half of July, 2001 prior to leaving for their rest days during the first half of July, as contended by Carrier, we find that the Organization has failed to sustain its burden of proving a Rule 40(1) violation. Accordingly, all aspects of the five consolidated claims are denied on their merits.

AWARD:

The claim is denied.

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