

PUBLIC LAW BOARD NUMBER 1837

Case Number 54
(MW-MUN-76-7)

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

and

Brotherhood of Maintenance of Way Employes

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement beginning on April 6 and continuing through May 14, 1976, when it changed the hours of service of Tie Gang T-7 without proper notice to avoid the payment of overtime. (See System File MW-MUM-76-7)
2. The Carrier further violated the Agreement on date mentioned in No. 1 above when it compelled the employees assigned by bulletin to Tie Gang T-7 to change their regular hours of service including lunch period to avoid payment of overtime.
3. Claimants as identified above now be made whole at their respective rates of pay for the difference between straight time for which compensated and punitive time to which they were entitled for one hour each day for the violation.
4. Claimants as identified be further made whole at their respective rates of pay for one hour at pro-rata rate each day of claim for the hours they were deprived of their regular bulletin quitting time for the violation.
5. Claimants as identified above be further compensated at their respective rate of their position one-half hour pro-rata pay when the Carrier failed to allow the lunch period between 12 noon each day until 1 P.M. but instead worked the employees during the bulletin lunch period.

FINDINGS: This Board, upon the whole record and all evidence, finds that:

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

OPINION:

The Claimants herein comprise the represented members of "Tie Gang T-7" during the period of April 6 through May 14, 1976; their identity need not be more precisely established since records for that period will bear out such specifics. The record of this case is clear that they were singularly and severally assigned to such positions by bulletin on March 31, 1976 with hours of work assigned as 8:00 a.m. - 12:00 noon and 1:00 p.m. - 5:00 p.m.; the lunch period was 12:00 noon to 1:00 p.m. On April 5, 1976 they were advised orally by management that they were to observe work schedules of 7:00 a.m. - 3:30 p.m. with a 30 minute lunch schedule as permitted. By bulletin notice of May 14, 1976 the hours of work heretofore orally related on April 5, 1976 was posted.

The Organization protested the change in hours from April 5 through May 14, 1976 citing, inter alia, Rule 26 (c) and (d) which prohibits changes in hours for short periods to avoid overtime and changes in work hours for regularly assigned

employees without a 36-hour advance notice. The Carrier contends--on the record made during handling on the property -- that such oral notice was proper and that the change was made to benefit the affected employees due to "excessive heat of the afternoon sun." In its presentation before this Board, the Carrier sets forth other reasons related to operational imperatives which, while logical and interesting, cannot be given credence due to their delinquency in presentation.

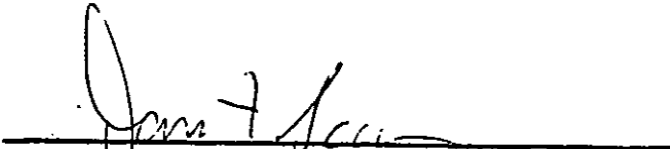
There is no question that the Carrier violated the Agreement at Rule 26 (d) relative to the 36-hour advance notice; the record does not support the Organization's assertion of violation of Rule 26 (c) insofar as avoidance of overtime is concerned; the implementation of the May 14, 1976 notice formally effectuating the change in work hours, and the maintenance of such schedule for a period of multiple months leads to such conclusion.

We are persuaded that the aforementioned violation carries with it a denial of rights and benefits to the Claimants. Such losses must be limited, however, to a 36-hour period post the April 5, 1976 oral notice since Rule 26 (d) does not specify the method by which the "36 hour's notice" is given. The Award is drawn accordingly.

AWARD:

The Agreement at Rule 26 (d) was violated. Members of record of Tie Gang T-7 for the dates of April 6 and 7, 1976 shall be compensated as follows:

1. Time and one-half for the hours worked from 7:00 a.m. to 8:00 a.m.
2. Compensation at the appropriate overtime rate for the time Claimants were required to work during their lunch period between 12:00 noon and 1:00 p.m. on such dates.
3. Compensation at the appropriate rate for the period of time not worked, if any, after 3:30 p.m. to 5:00 p.m. on such dates.


James F. Searce
Neutral Member


E. N. Jacobs, Jr.
Carrier Member


William E. LaRue
Organization Member

Dated MARCH 24 1982 at Philadelphia Pa