

BEFORE PUBLIC LAW BOARD NO. 5810

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

CSX TRANSPORTATION, INC.

Case No. 1

STATEMENT OF CLAIM:

(1) The Agreement was violated when the Carrier improperly changed the work week of SPG Gang 6XR2 from a Monday through Thursday work week to a Sunday through Wednesday work week beginning October 10, 1993 and continuing and then failed to properly compensate the members of SPG Gang 6XR2 for work they performed or were entitled to perform beginning October 10, 1993 and continuing [Carrier's File 12(93-1127) CSX].

(2) As a consequence of the violations referred to in Part (1) above, the members of SPG Gang 6XR2, listed within our initial letter of claim, shall each be allowed: (a) ten (10) hours' pay at the difference between their respective straight time rates and overtime rates for work performed on each Sunday beginning with Sunday, October 10, 1993 and continuing for each Sunday thereafter until the violation is corrected and (b) ten (10) hours' pay, at their respective straight time rates, for the time they were not allowed to work on each Thursday beginning Thursday, October 14, 1993 and continuing each Thursday thereafter until the violation is corrected.

FINDINGS

This claim arose when, effective October 10, 1993, the Carrier unilaterally changed the work week of System Production Gang 6XR2 from ten hours per day Monday through Thursday with Friday, Saturday and Sunday as designated rest days, to ten hours per day Sunday through Wednesday with Thursday, Friday and Saturday as designated rest days.

The Organization challenged this unilateral change, contending that because the Claimants worked October 4 through 7, 1993, they were entitled to have October 8, 9, and 10, 1993, as rest days. Because the Claimants were ordered to work on October 10, 1993, their

designated rest day, the Union believes that the Claimants are entitled to overtime compensation for Sunday, October 10, 1993.

The Organization additionally contends that "the CIC had plainly ruled in the Answer to Issue No. 16, that Section 5 of the PEB 219 recommendations (Article X of the Imposed Agreement) did not grant the carriers the right to change work weeks."

The Carrier denied the claim, contending that it was under no obligation to pay the overtime rate to the Claimants for Sunday, October 10, 1993, because they did not work any overtime on that date. Additionally, the Carrier contended that "the members of Gang 6XR2 were given adequate Notice, per the provisions of Section 6," that their rest days would be changing. The Carrier argued that "in times of operational necessity it may rearrange the workweek." Because "Sundays were the lightest rail traffic day," the Claimants therefore would be allowed more track time to perform their work.

The parties being unable to resolve the issue, this matter came before this Board. This Board has jurisdiction over the dispute involved in this hearing.

The Organization bears the burden of establishing that the Carrier violated the controlling System Production Gang ("SPG") Agreement, particularly Sections 5 and 6 thereof, when it unilaterally changed the workweek of Gang 6XR2.

This Board's review of the parties' entire submissions reveals that, despite widely different assertions as to what authority the Carrier has relative to changing scheduled work weeks, the parties essentially agree that the resolution of this dispute should be guided by the Contract Interpretation Committee's ("CIC") answers to Issues Nos. 16, 21, and 25. The CIC stressed, in all three answers, that although Presidential Emergency Board ("PEB") No. 219

granted greater flexibility to carriers in scheduling work weeks and rest days for production crews, carriers nevertheless still were required to comply with existing local rules and procedures governing the bulletining and assigning of employees to Alternative Work Week schedules.

To fully prevail on its claim, the Organization therefore must establish that the Carrier violated the local SPG Agreement when it changed the workweek for Gang 6XR2. The record in this matter, however, does not contain definitive evidence that applicable provisions of the SPG Agreement prohibited the Carrier from unilaterally changing the Gang's bulletined workweek and rest days. The SPG Agreement does expressly mention that the Carrier may unilaterally change a four-day workweek to a five-day workweek, but this does not mean, as the Union asserts, that other kinds of schedule changes are prohibited. The SPG Agreement does not specifically prohibit the type of change at issue here.

Section 5 of the SPG Agreement sets forth the required content of bulletins advertising SPG positions; among other things, such bulletins must indicate the initial assigned rest days. Section 6 of the SPG Agreement provides that the National Forty Hour Work Week Rule governs SPG work weeks, except for certain specific provisions set forth elsewhere in Section 6. These other provisions describe the most and least desirable types of work weeks for SPGs, set a limit on the number of consecutive days that SPGs may be required to work, sets forth a procedure for determining whether a gang will work an additional day to complete work at a particular location before moving to a new location, and specifies how a carrier may change a gang's schedule to the least desirable work week.

Whether Section 5 and Section 6 are read separately or in conjunction, there is nothing here that suggests that the Carrier is prohibited from changing the scheduled rest days for an SPG

gang scheduled to work four ten-hour days each week. Similarly, neither PEB 219 nor the Imposed Agreement necessary to implement PEB 219 contain any prohibition against the Carrier's changing the scheduled rest days so long as it gives adequate notice of any such change, and it complies with the National Forty Hour Work Week Rule, the Imposed Agreement, and all other applicable statutes, agreements, and policies.

The record shows that the Carrier complied with the provision in the SPG Agreement requiring it to give advance notice of the change to the Organization and five days' notice of the change to the affected employees. There is no evidence, in addition, that the change violated any other applicable agreement or statute. The record therefore fails to show that the Carrier committed a violation when it changed the scheduled work and rest days for Gang 6XR2.

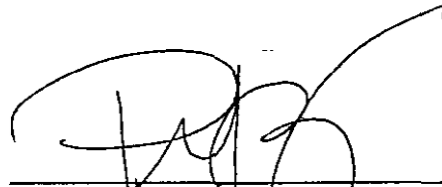
There is a problem, however, with the manner in which the Carrier implemented this change. Under the National Forty Hour Work Week, as modified in Article 5 of PEB 219 and applied in Section 6 of the SPG Agreement, covered employees who work four ten-hour days in a week are entitled to have three days off during that week; such employees are entitled to pay at the time and one-half rate for hours they are required to work in excess of forty hours in the week.

Gang 6XR2 initially had a work week that began each Monday; they worked Monday through Thursday, with Friday through Sunday as their designated rest days. During the week of October 4, 1993, the last week that they worked under this schedule before the change at issue took effect, the Gang worked Monday through Thursday, had Friday and Saturday as their rest days, then worked on Sunday, October 10. Sunday, October 10, therefore represented the fifth 10-hour day that the Gang worked during their workweek beginning October 4, 1993. The Gang

members accordingly should have been paid at the time and one-half rate for this day, but they were not. The members of Gang 6XR2 were entitled to receive compensation at the overtime rate for the hours that they worked on Sunday, October 10, 1993. They therefore shall be compensated in an amount equal to the difference between the straight-time rate of pay that they already received for October 10, 1993, and the applicable overtime rate for the hours that they worked that day.

AWARD:

This claim is sustained in part and denied in part, in accordance with the Findings.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

Dated: 9/24/96



STEVEN V. POWERS
ORGANIZATION MEMBER

Dated: 9/30/96