

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6244

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)

) Case No. 1

and)

) Award No. 1

UNION PACIFIC RAILROAD COMPANY)

)

)

Martin H. Malin, Chairman & Neutral Member

S. V. Powers, Employee Member

W. E. Naro, Carrier Member

Hearing Date: October 14, 1999

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood of Maintenance of Way Employees that:

- (1) The Agreement was violated when the Carrier required the employees assigned to System Gangs 9063 and 9083 to work during predesignated deferred or rest times as a result of their starting time not properly deferred to allow adequate rest and then failed and refused to properly compensate them for service performed prior to their entitled deferred starting time (System File N-488/1080487).
- (2) As a consequence of the violation referred to in Part (1) above, "... all Brotherhood of Maintenance of Way Employees assigned to Gangs 9063 and 9083 claiming that each must be allowed compensation for this violation of the Agreement. Specifically, each must be allowed eight (8) hours pay for June 23, 1997, at his respective overtime rate of pay, as outlined in rule 35 of our Agreement, for time worked during the predesignated deferred or rest time. This compensation must be in addition to any pay which he may have received in connection with the referred to change of assembly point on the dates in question."

FINDINGS:

Public Law Board No. 6244, upon the whole record and all of the evidence, finds and

holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

Claimants were members of Gangs 9063 and 9083, working in On-Line Service, with an assembly point of Clagstone, Idaho, on Friday, June 20, 1997. Claimants' assigned hours of duty were 7:00 a.m. to 3:30 p.m., Monday through Friday, with Saturday and Sunday as rest days. Carrier instructed Claimants to report for duty at 7:00 a.m. on Monday, June 23, 1997, at a new assembly point – Adelaide, Idaho. The road distance between Clagstone and Adelaide was 603 miles. Carrier did not defer Claimants' starting time on Monday, June 23, 1997.

The Organization contends that Carrier violated Rule 30(a) of the On-Line Agreement of October 31, 1988. Rule 30(a) provides, in relevant part:

"The assembly point for employees headquartered on-line will be the designated work site where the day's work is scheduled to begin. If the assembly point for on-line employees is changed from one workday to another, the Carrier must designate the new assembly point no later than the close of shift on the previous workday. Unless so designated, the assembly point will remain unchanged. . . .

For the purpose of insuring that traveling on-line employees are afforded an opportunity to secure adequate rest, it is agreed that the distance traveled between a former assembly point and a new assembly point during any 24-hour period will not normally exceed four hundred fifty (450) miles. Likewise, traveling on-line employees will not normally be expected to travel in excess of one hundred fifty (150) miles in moving from the former assembly point to the new assembly point during the unassigned hours between two consecutive workdays."

The Organization argues that Rule 30(a) precluded Carrier from requiring Claimants to travel more than 150 miles between the end of the shift on Friday, June 20, 1997, and the beginning of the shift on Monday, June 23. The Organization maintains that Friday, June 20 and Monday, June 23 were consecutive work days. Consequently, the 150 mile limit applied. The Organization urges that its view is supported by the plain meaning of Rule 30(a). It further contends that the term "consecutive work days" is used elsewhere in the parties' Agreements to include Friday and Monday, where Saturday and Sunday are rest days. Finally, the Organization maintains, that the past practice has been to not require more than 150 miles to be traveled between Friday and Monday and, where more than 150 miles was traveled without deferral of the employees' start times, the Organization has filed a claim. The Organization contends that the Claimants' start times on June 23 should have been deferred in accordance with Appendix W, which provides, in relevant part:

"Q-6 An employe is assigned to on-line service with a 7:00 a.m. to 3:30 p.m. workday and a Monday through Friday workweek. At close of shift Wednesday, the employe is notified by his supervisor that his assembly point is being changed from point A to point

B, a distance of 325 miles. Provided there is no emergency involved in this situation, when and where would the employee report for Thursday's work and what allowances would he receive?

A-6 The Employee would be entitled to a mileage allowance of \$55.00 (see Section 3).

A maximum of one hundred fifty (150) miles would be traveled during the employee's rest hours and for the remaining one hundred seventy-five (175) miles the Carrier would defer the starting time on Thursday by three (3) hours until 10:00 a.m. The employee would be allowed three (3) hours straight time from 7:00 a.m. to 10:00 a.m."

The Organization contends that Carrier's failure to defer the Claimants start time by seven and one-half hours should be remedied by payment to each Claimant for the seven and one-half hours at the applicable overtime rate. The Organization observes that Carrier did not contest the remedy during handling on the property or in its submissions, and that the time and one-half rate is used to compensate employees in other circumstances where they work during hours that they were supposed to be off with pay.

Carrier argues that the plain meaning of Rule 30(a) allows it to require employees to travel up to 150 miles following the end of a shift on a workday, but also allows it to require employees to travel up to 450 miles on a rest day. Carrier urges that the Organization's interpretation of Rule 30(a) reads the 450 mile limitation out of the Rule. Carrier maintains that it has consistently applied Rule 30(a) in this manner since the Rule became applicable in 1988.

The Board has considered the record and the parties' positions carefully. The case turns entirely on the meaning of the phrase "during the unassigned hours between two consecutive workdays." On its face, the phrase is susceptible to two reasonable interpretations. The phrase reasonably could be interpreted to mean that the 150 mile limitation applies to travel between two calendar days when each day is a scheduled workday. This is Carrier's interpretation. Under this interpretation, the Rule serves to limit the amount of time after a shift an employee must travel and still be expected to report at his normal start time the following day.

The phrase also reasonably could be interpreted to refer to all unassigned time between work days, as the Organization urges. Such an interpretation serves to limit the extent to which required travel intrudes on the employee's unassigned, *i.e.* uncompensated personal time. Thus, we conclude that Rule 39(a) is ambiguous and that we must look beyond the four corners of the Rule to interpret it.

The Organization has shown that the parties have used the phrase "consecutive workdays" in other rules to include the day immediately before and the day immediately after an employee's rest days. Thus, Rule 48(k) provides that employees forfeit their seniority and employment when they are absent without authority "for five (5) consecutive working days." This rule consistently has been interpreted to be met by an employee whose rest days are Saturday and Sunday and who is absent three days before the weekend and two days after the weekend, or similar combinations.

Under Rule 48(k), when an employee's rest days are Saturday and Sunday, Friday and Monday are considered to be consecutive working days.

Similarly, the National Vacation Agreement provides for vacation of a specified number of "consecutive workdays." In such circumstances Friday and Monday are considered to be consecutive workdays for an employee with rest days of Saturday and Sunday. On the other hand, Carrier has pointed to no provision in which the term "consecutive workdays" is used in such a way as to exclude the day immediately preceding and the day immediately following an employee's rest days.

Carrier contends that the Organization's interpretation of Rule 30(a) renders the 450 mile limitation meaningless. However, as the Organization has pointed out in its reply to Carrier's submission, the 450 mile limitation will apply when Carrier has employees travel during their regular assigned hours. Such an example of the 450 mile limitation appears in Appendix W-2. Appendix W-2 provides that when travel exceeds the mileage restrictions set forth in Rule 30(a), excess mileage is discounted at the rate of sixty miles per hour from the start of the shift on the next scheduled workday, rounded off to the nearest half hour. Appendix W-2 provides two examples, one of which refers to violations of the 450 mile limitation:

"[I]f at 7:00 a.m. on Tuesday the Carrier designates a new assembly point for the same gang 620 miles from the former assembly point, i.e., 170 miles in excess of the 450 mile 24-hour restriction, the employees involved would then be expected to report to the new assembly point and commence work at 10:00 a.m. Wednesday, three (3) hours after the regular 7:00 a.m. starting time and each would receive straight time wages from 7:00 a.m. to 3:30 p.m. Tuesday and 7:00 a.m. to 10:00 a.m. Wednesday. . . ."

Finally, Carrier argues that the consistent practice has been to apply the 150 mile limitation to travel after the conclusion of a shift on a workday and the 450 mile limitation to travel on a rest day. However, the only evidence of past practice in the record consists of a written statement from the Organization's Vice President of the Western Region, who served as General Chairman of the Union Pacific System Division from 1986 to 1998. In the statement, the former General Chairman declared that between 1988 and 1995 he received about six inquiries from employees concerning whether starting times had been deferred correctly following moves over weekend rest days and that, in each instance he calculated that the Carrier had correctly deferred the starting time based on the 150 mile limit and the formula provided in Appendix W-2. The statement further declared that he grieved every instance of which he was aware where Carrier did not defer the starting time based on the 150 mile limitation.

Accordingly, we find that the only evidence of past practice with respect to Rule 30(a) and the parties' undisputed general interpretation of consecutive workdays support the Organization's interpretation of Rule 30(a). Furthermore the Organization's interpretation results in an easily applied division between the 450 mile and 150 mile limitations. The 450 mile limitation applies to travel commenced during assigned working hours and continuing not more than 150 miles after the conclusion of assigned hours. The 150 mile limitation applies to travel during unassigned

hours.

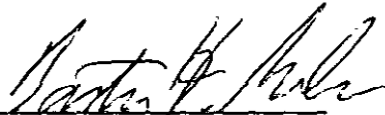
The Organization seeks a remedy of compensation at the time and one-half rate for the seven and one-half hours the Claimants worked on June 23, 1997, that should have been deferred. Carrier has not disputed this remedy either during handling on the property or in its submissions to this Board. Accordingly, we will sustain the claim, as presented.

AWARD

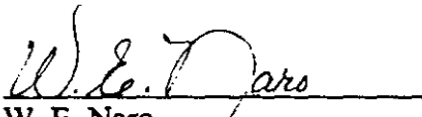
Claim sustained.

ORDER

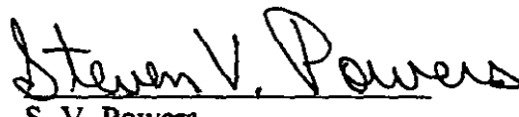
The Board, having determined that an award favorable to Claimants be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto.



Martin H. Malin, Chairman



W. E. Naro,
Carrier Member



S. V. Powers,
Employee Member

Dated at Chicago, Illinois, November 8, 1999.