

**PUBLIC LAW BOARD NO. 7163**

**CASE NO. 591**

**AWARD NO. 591**

<b>Brotherhood of Maintenance of Way Employees Division</b>	)	
<b>of the International Brotherhood of Teamsters</b>	)	
	)	
<b>and</b>	)	<b>Arbitration Decision</b>
	)	<b>and Award</b>
<b>CSX Transportation, Inc.</b>	)	
	)	
<b>Carrier File:20-78641</b>	)	
<b>BMWE File: SPG405720</b>	)	

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**I. STATEMENT OF THE CLAIM**

“Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier changed the scheduled forty (40) hour work week of the employees assigned to System Production Rail Gang 5XC1 by changing their designated starting time to begin at 6:30 A.M. on Monday, September 14, 2020 and failed to properly compensate said employees at their overtime rates of pay for working the remaining hours of their rest day (System File SPG405720/20-78641 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimants J. Lokey, R. Stevens, B. Edwards, E. Gray, A. Underwood, K. Pokrywka, S. Pellham, T. Brown, J. Miller, M. Whitney, C. Wetzel, R. Copeland, C. Harp, J. Booker, R. Randle, M. Moore, J. Hanson, R. Morris, P. Gasparovic, K. Jackson and N. Simeri shall now be ‘... compensated at their overtime rate for all hours worked on Monday, September 14, 2020 between 06:30 hours and 22:00 hours. \*\*\*’ (Employees’ Exhibit ‘A-1’).”

**II. RELEVANT CONTRACT ARTICLES AND RULES**

RULE 10 - 40 HOUR WORK WEEK, (a)

RULE 11 - OVERTIME, (c), (d), (e)

## APPENDIX “S” - UPDATE SYSTEM PRODUCTION GANG AGREEMENT

### Section 6

Work Week on SPGs (Amended 9/28/93) (Amended by PLB 5810) provides in pertinent parts:

A. The workweek on SPGs will be governed by the National Forty Hour Work Week Rule as modified in Article 5 of PEB 219, and as clarified and modified by the Special Board established pursuant to Public Law 102-29, except as provided herein.

B. The most desirable forty (40) hour work week for SPGs will be four (4) consecutive ten (10) hour days followed by three (3) consecutive rest days, with both Saturday and Sunday observed as rest days. The work week and rest days of SPGs may be changed upon five (5) working days notice and allowance of overtime, if applicable, consistent with the findings of Public Law Board No. 5810, Award 1.

### III. FACTS

The Claimants were assigned to the System Production Rail Gang (SPG) 5XC1. They had a forty (40) hour work week with four consecutive 10-hour days followed by three consecutive rest days. Their start time was 10:00 P.M., ending at 8:30 A.M. on the following calendar day.

On September 7, 2020, the Carrier notified the Claimants that starting September 14, 2020, their new start and ending time would be 6:30 A.M. to 5:00 P.M. The Claimants worked a normal 40-hour week, which ended at 8:30 A.M. on Friday, September 11, 2020. They took their rest days which included the balance of Friday, all of Saturday, and all of and Sunday. On Monday, September 14, 2020, the Claimants reported for duty at 6:30 A.M.

### IV. POSITIONS OF THE PARTIES

#### Organization's Position

The Organization contends that the Carrier failed to compensate the named Claimants for intruding on their three consecutive rest days when their schedules were changed from 10:00 P.M. - 8:30 A.M. to 6:30 A.M. - 5:00 P.M. starting September 21, 2020. It explains that when the Claimants' shift ended on Friday, September 11, the rest-day period should have been calculated from 8:30 A.M. on Friday through 10:00 P.M. on Monday. It explains that by starting the new schedule at 6:30 A.M. on Monday, the Claimants' rest time was shortened by 15.5 hours. Citing

PLB 5810, Award 1. The Organization contends that this violated the National Agreement and as a result, the Claimants must be compensated with overtime pay.

### Carrier's Position

The Carrier argues that there is no violation of the Agreement. It states that the team's last work day during the week of September 7, 2020, started at 10:00 P.M. on Thursday, September 10th and ended at 8:30 A.M. on Friday, September 11. It acknowledged that Friday was considered a rest day, since the work day began on Thursday and all hours worked were applied to Thursday. The Carrier further states that the Claimants were not required to report on or start their rest day, Friday, September 11, 2020.

The Carrier contends that in this case, after the schedule change became effective, the Claimants still had Friday, Saturday, and Sunday as rest days before the first day of the new start time at 6:30 A.M. on Monday.

It also acknowledges that sometimes there is a minor intrusion on a rest day, but states that the National Agreement does not compel payment of overtime under these circumstances. It notes that sometimes a shift may change from a day schedule to a night schedule, providing employees with an extended rest day going into the first day of the new schedule. The Carrier explains that this extended rest time balances out changes such as the one in this case.

## **V. DECISION**

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The Board finds that Appendix "S" defines the SGC's work week as a 7-day period that includes four 10-hour work days and three rest days, with Saturday and Sunday as at least two of

the three rest days. Work days are defined in hours, i.e., 10 hours. Rest days are defined as days and not limited to a certain number of hours. If the parties wished to limit the number of hours of rest on rest days, it could have done so in negotiations. Therefore, the Board finds that each rest day encompasses 24 hours.

In this case, Friday, September 11 was the first designated rest day of the original schedule, starting at 8:30 A.M. The third rest day of that week ended at 8:30 A.M. on Monday, September 14. This gave the Claimants three full 24-hour rest days.

In PLB 5810, Award 1, the Claimants worked an entire fifth 10-hour day when the Carrier changed the work week schedule by starting the work week on Sunday, when Sundays had been previously scheduled as rest days. That Board found that the requirement to pay the Claimants at the overtime rate was triggered because they were working overtime for the entire rest day. In this case, the assigned rest days were not changed, only the start and end times on the first day of the new schedule. However, while there was no overlap of an entire day, as there was in PLB 5810, there was a two-hour intrusion into the last 24-hour rest day on Monday.

The Board does not agree with the Organization's argument that the Claimants worked 15.5 hours during their rest period on that Monday; their third 24-hour rest day ended at 8:30 A.M. on Monday. However, there was an overlap of two hours on that Monday, since the start time of the Claimants' new schedule began at 6:30 A.M.

The Carrier suggests that two hours is a de minimis consequence of the schedule change and no remedy is required, pointing out that prior changes have resulted in additional rest time as a result of a schedule change. However, the Board must acknowledge the overlap as a violation of Appendix "S", despite the minimal intrusion into the last rest day. There is no bright-line when changes could result in more than a de minimis intrusion. Rule 11(e) of the Agreement was intended to cover these situations. It states:

(e) There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight (8) paid for at overtime rates on holidays or for changing shifts, be utilized in computing the forty (40) hours per week... (Emphasis added)

Therefore, the Board finds that the Carrier violated Rule 11(e) of the Agreement. The Claimants were entitled to time and a half pay for the two hours of overtime work between 6:30 A.M. and 8:30 A.M. on Monday, September 14, but were only paid their straight rate.

## VI. AWARD


1. The claim is Granted, in part.
2. The Claimants shall be awarded two hours' pay at their half time rate for the two hours of overtime they worked on September 14, 2020.
3. Payment shall be made within 30 days of this award.



Casey Summers  
Organization Member



John Ingoldsby  
Carrier Member



Sheila Mayberry, Chair and Neutral Member  
December 26, 2024

EMPLOYEE MEMBER'S DISSENT  
TO  
AWARD 591 OF PUBLIC LAW BOARD NO. 7163  
(Referee Sheila Mayberry)

The decision in this case is palpably erroneous and cannot serve as precedent in future cases. While the Organization is partly at fault for assuming the twenty-four (24) hour workday/rest day issue was so well settled that no Award citation was necessary, this does not change the fact that Award 591 of PLB No. 7163 is incorrect and cannot guide future cases. This is especially important given that many agreement rules, side agreements and memorandums of understanding are based on a work and rest day being a twenty-four (24) hour period which begins at the start of an employee's assigned tour of duty and ends twenty-four (24) hours thereafter.

For example, NRAB Second Division Award 7073, in pertinent part, reads:

“Two recent Awards, No. 2987 (4th Div. – O'Brien) and No. 20531 (3rd Div. - Lieberman), are particularly applicable to the issue before us in this dispute. In Award 2987, the Board stated:

‘It has been well settled by all Divisions of this Board that an employee's work day begins at the commencement of his assigned tour of duty and ends 24 hours subsequent thereto. See, for example, Second Division Award No. 1485 and No. 1673 and Fourth Division Award No. 737 and No. 2697. Furthermore, an employee's rest day must have a definition consistent with his work day.’ (Emphasis added).” (Emphasis in original)

There are common sense reasons for the above, which can be found in the slogan that kicked off the eight (8) hour day movement in the late 19<sup>th</sup> century: “*8 hours for work, 8 hours for rest, 8 hours for what you will*”. To have a proper rest period, after an employee works eight (8) hours, they must be allowed eight (8) hours of rest and eight (8) hours for what they will. When the parties contractually agreed to four (4) ten (10) hour days, employees lost two (2) hours per day for “what they will”, but the quid pro quo was a third accumulated rest day without work. By breaking the continuity of the twenty-four (24) hour period, the Award denies employees the correct overtime compensation for extended shifts and work on rest days, contrary to the negotiated Agreement.

Additionally, the drafters of the Agreement understood that shift changes could infringe upon employees' rest days because overtime is computed as part of the forty (40) hour week if the new start time overlaps with a rest day. Rule 11(e), in pertinent part, states:

“(e) There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight (8) paid for at overtime rates on holidays or for changing shifts, be utilized in computing the forty (40) hours per week....”

The Neutral's decision undermines the rule's intent to protect employees from losing rest time by providing overtime pay for this type of shift change. This improper decision would allow the Carrier to manipulate shift schedules without properly compensating employees for the resulting loss of rest period and rest day protections. The Organization is not claiming the Agreement prohibits the Carrier from making schedule changes from one week to the next. Still, if such changes infringe upon rest periods or rest days, the Carrier must compensate those employees at the overtime rates as required by Rule 11(e). Bottom line, the Carrier is not allowed to infringe upon earned rest periods or rest days without compensating the Claimants at the overtime rate.

In this instance, the first workday for the subject week began Monday, September 7, 2020 at 10:00 P.M. and ended the following morning at 8:30 A.M. [thirty (30) minute lunch]. The remaining thirteen and one-half (13.5) hours were for rest and personal time. This twenty-four (24) hour period continued daily, with the final workday being Thursday, September 10, 2020. The next day in the work week was a rest day that began at 10:00 P.M. and lasted until Saturday at 10:00 P.M.

It was a mistake for the Neutral to start the rest period at 8:30 A.M. on Friday immediately after the shift was completed because the employees still had thirteen and one-half (13.5) hours of that workday left for rest and personal time, as the day did not end until 10:00 P.M. on Friday. This award completely disrupts the earned rest periods and rest days. While this was not a complete rest day as in Award 1 of PLB No. 5810, the premise is the same: the Carrier infringed upon the Claimants' rest period.

Moreover, the decision in Award 591 of PLB No. 7163 is deeply flawed because it contradicts established rules within the Agreement, including Rules 11, 13 and Appendix "S", Section 7 and disregards precedents set by prior awards. For example, Rule 13 – HOLIDAY – REST DAY WORK, in pertinent part, reads:

“(a) Service performed on assigned rest days \*\*\* shall be paid for at the rate of time and one-half, computed on the actual minute basis with a minimum of four (4) hours at the straight time rate for two (2) hours and forty (40) minutes work or less. Such work in excess of sixteen (16) consecutive hours shall be paid at the double time rate.”

Employees are entitled to time and one-half or double time pay based on consecutive hours worked. The decision's failure to recognize the continuous nature of the twenty-four (24) hour workday and rest day potentially undermines this entitlement, creating future disputes on well-settled issues.


Furthermore, Appendix "S", Section 7 – Overtime, in pertinent part, states:

- "A. All hours in excess of 8 when working 8 hour days or in excess of 10 when working 10 hour days will be paid at time and one half rate. For time worked in excess of sixteen (16) hours following the beginning of the employee's regular starting time, the double time rate will apply"

The decision fails to honor the cumulative work period concept, depriving employees of the proper compensation for extended shifts. The findings of this Award will introduce uncertainty around when double time pay applies and again create more disputes on already settled issues.

The Organization would be remiss not to mention that this same issue, on this property, has recently been argued before the National Railroad Adjustment Board Third Division in three (3) separate cases via Docket Nos. MW-47962 (NRAB-00003-220665), MW-47966 (NRAB-00003-221036) and MW-48040 (NRAB-00003-230377). Based on the flawed reasoning and decision in the instant dispute, we strongly urge that future stakeholders take the time to review those cases in connection with any future claims regarding this particular issue.

Therefore, I must vigorously dissent.



Casey Summers  
Employee Member