

PUBLIC LAW BOARD NO. 6867

AWARD NO. 19

CASE NO. 19

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 established a new compressed work cycle of nine (9) workdays, from the previously established eight (8) days, during the last half of August 2001 for all employees assigned to System Gangs 9049, 8563, 8564, 8584, 8583, 8553, 8554, 8570, 8575, 8579, 9002, 9126, 9033, 9062, 9067, 9068, 9071, 9082, 9056, 9001, 9023 and 9061 (System File W-0140-158/1292089).

(2) As a consequence of the violation referred to in Part (1) above, the employees assigned to System Gangs 9049, 8563, 8564, 8584, 8583, 8553, 8554, 8570, 8575, 8579, 9002, 9126, 9033, 9062, 9067, 9068, 9071, 9082, 9056, 9001, 9023 and 9061 shall now be compensated as follows:

'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 claim involves the application of Rule 40, Alternative Work Periods, to the members of twenty-two system gangs who were working consecutive half workweek arrangements during the second half of August 2001. What is in dispute is Carrier's assignment of work 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 various 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 the second half of August, 2001. The claim seeks overtime pay for the ninth work day in the half and compensation for the additional straight time hours they should have worked on each of the eight days.

A careful review of the record and arguments of the parties, as well as prior Board precedent, convinces us that the Organization's claim for

additional compensation for the second half of August, 2001 must be denied. This case is substantially identical to Case No. 17 recently decided by this Board, which dealt with the propriety of Carrier scheduling work on nine consecutive workdays in the second half of July, 2001 to many of the same gang members. Since the arguments of the parties and the underlying records are the same, they will not be repeated herein and their recitation in Public Law Board No. 6867, Award 18 is incorporated in this decision. We confirm our findings with respect to the effect of the comments contained in some of the bulletins, as well as the absence of the specific election forms for the gangs in issue in this case. As was the case in Award 18, there is nothing in this case showing that Carrier did not schedule these gangs during the second half of August, 2001 in compliance with its assertion that they were regularly scheduled for 10 hour days, with the remaining hours distributed throughout the work period. This fact differentiates this case from the one decided by the Board in Award 17 and negates the alleged violation of Rule 40(c). Additionally, we find no evidence in this record to support a Rule 40(l) violation as there is nothing establishing that there was a schedule change requiring written notice, or that gang members were not timely informed of their work schedules.

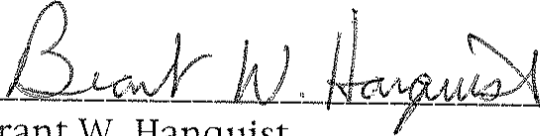
This Board reaffirms its holding in Award Nos. 3, 17 and 18, that the plain language of Rule 40(a) does not contemplate a compressed half of any fixed number of days, but speaks of the assignment of consecutive workdays on the basis of a regularly scheduled number of hours between 8 and 12. Thus, we find that the Organization has not met its burden of proving that Carrier's assignment of Claimants to work a ninth day in the second half of August, 2001 was in violation of Rule 40(a).

AWARD:

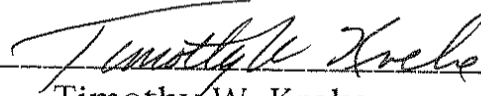
The claim is denied.



Margo R. Newman
Neutral Chairperson



Brant W. Hanquist
Carrier Member



Timothy W. Kreke
Employee Member

Dated: 4-23-08

Dated: April 23, 2008