

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 162**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**(Carrier File MW-CN-04-10-SG-153)**

Statement of Claim:

Claim on behalf of the members of the TS-2 Timber and Surfacing Gang requesting that they each shall be allowed six hours and thirty minutes overtime pay, in that they worked beyond their regularly scheduled ten hours shift on certain days during the week of April 12, 2004, but were released early at the end of the week as opposed to being compensated at the overtime rate.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

**AWARD**

After thoroughly reviewing and considering the transcript and the parties' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

The record in this case shows that employees working on the TS-2 Timber and Surfacing gang acknowledged, in writing, their desire to extend their normal working hours on Monday, Tuesday and Wednesday under a make-up arrangement that would permit them to leave work early each Thursday in order to travel home for a long weekend. The majority of employees expressed their voluntary consent to this arrangement, and clearly understood that any additional time worked on Monday, Tuesday or Wednesday would be used for make-up time for any regularly assigned hours not worked each Thursday. The Gang worked a four ten-hour workday schedule pursuant to Article

X, Paragraph (b), Alternative Work Week and Rest Day Rule of the February 6, 1992 Imposed Agreement covering production crews. It is undisputed that the total number of hours of make-up time worked outside their regular 10-hour workdays between Monday and Wednesday was less than the eight hour maximum permitted by the rule and were applied to the 10-hour workday each Thursday during the claim period. Accordingly, it is clear that the gang completed their forty hours of work for the workweek during the period April 12 through April 15, 2004, and was able to work less than the 10-hour day on Thursday due to the fact that they had made up the time.

### DISCUSSION

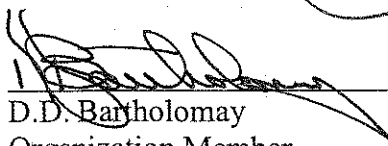
In this non disciplinary claim, it is the Organization's burden to demonstrate that there was a genuine lack of consensus to the make-up time arrangement. Respectfully, given the undisputed facts noted and detailed above, the Organization has failed in its burden. Accordingly, the claim must be dismissed for lack of sufficient evidence.

### CONCLUSION

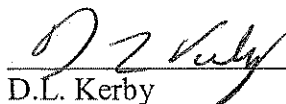
The claim is dismissed.



Dennis J. Campagna  
Chairman and Neutral Member



D.D. Bartholomay  
Organization Member



D.L. Kerby  
Carrier Member

Dated: July 31, 2007, Buffalo, New York