

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 164

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-HARR-04-06-SG-053)

Statement of Claim:

Claim on behalf of the members of the R-12 Rail Gang requesting that they each shall be allowed overtime pay for excess hours worked during the week and on rest days from December 15 – 21, 2003, in that they were allowed off on the work days between December 22, 2003 and January 2, 2004, instead of being paid overtime.

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 record evidence including the parties' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

The case before the Board questions whether the Claimants are entitled to be paid 120 hours straight time for a three week period resulting from a total of 88 hours worked from Monday December 15th through Monday December 22nd. The circumstances giving rise to the instant claim before this Board are as follows.

R-12 is a Rail Gang with an established work schedule consisting of four (4) consecutive ten (10) hour days, followed by three (3) consecutive days off. This ten hour schedule is in lieu of a five (5)

eight (8) hour day workweek. During the relevant time period associated with this claim, it is undisputed that R-12 worked a four day ten hour workweek.

It is undisputed that for the last weeks of December 2003, employees on the R-12 Gang voted, and the majority agreed on a makeup work arrangement whereby the Gang would be permitted to accumulate rest days and work eighty (80) hours at the straight time rate within the spread of two regularly assigned work weeks in order to have more consecutive time off during the following scheduled work period in connection with the Christmas and New Year's Holidays. Accordingly, the R-12 Gang worked eight days in a row, Monday through Monday, thereby making up sufficient time so as to be off for six days in a row, Tuesday through Sunday. However, since Wednesday and Thursday were Christmas Eve (December 24th) and Christmas Day (December 25th) respectively, two of the make up days were carried over to the following week, thereby allowing for three days off in addition to the two day Holiday period associated with New Years Eve and New Years Day.

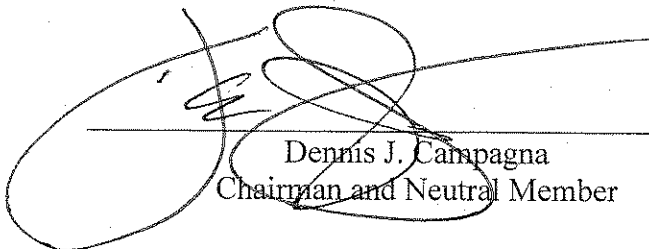
DISCUSSION

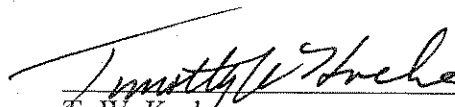
In making a determination based on the facts herein, the Organization, who bears the burden of proof in this case, must be able to point to a specific Rule that supports its claim.

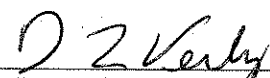
Article X of the February 6, 1992 Agreement provides for the establishment of a four day, ten hour workweek followed by three consecutive days off. This four day workweek arrangement is in lieu of the traditional five eight hour work day workweek. In perusing the Agreement, the Board notes that there is nothing in the Agreement prohibiting those employees on a Rail Crew established with a workweek of four (4) ten (10) hour days pursuant to Article X from participating in the make-up time provisions of Article 31 (b). Article 31 (b) permits employees to work eighty (80) hours at the straight time rate within the spread of two regular assigned work weeks, followed by use of their accumulated and regular assigned rest days. Respectfully, the Organization has not pointed to anything in the Agreement that prohibits employees from making up time under Rule 31 Section (a). Moreover, Rule 31 provides that any time worked pursuant to such a makeup time arrangement is paid at the pro rata rate and is not subject to the overtime provision of the Agreement. Given the foregoing, there is an insufficient basis in the record to support the Organization's claim.

CONCLUSION

The claim is denied.



Dennis J. Campagna
Chairman and Neutral Member

T. W. Kreke
Organization Member

D.L. Kerby
Carrier Member

March 31, 2008
Dated