

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 161

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-CN-04-09-SG-152)

Statement of Claim:

Claim on behalf of the members of the S-3 Surfacing Gang requesting that they each shall be allowed two hours and fifteen minutes overtime pay, in that they worked beyond their regularly scheduled ten hours shift on certain days during the week of April 5, 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 reflects that April 5, 2004 was the beginning of a Holiday week during which employees received Holiday pay on April 9, 2004, Good Friday. General Division Engineer J. Mick determined that a majority of employees on the S-3 gang had voluntarily communicated their desire for a continuing make up time arrangement whereby the gang would work beyond their regularly scheduled 10-hour days and would essentially bank all hours worked beyond 10 hours on Monday, Tuesday and Wednesday so that they could leave work early on Thursday April 8, 2004 in order to

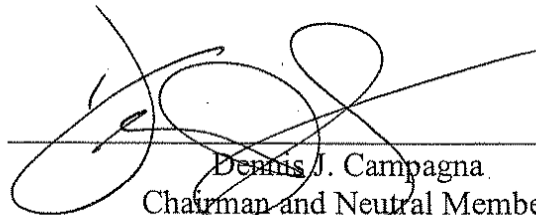
enjoy a four day Holiday weekend¹. Foreman Henry Stroy conducted the voting procedures and confirmed that the majority of employees on the S-3 gang were in agreement with the arrangement to end the workweek as soon as they completed 32 yours. Pursuant to this understanding, on April 5, 6 and 7, the gang worked a total of 2 hours 15 minutes over their regularly scheduled hours, less than the eight hour maximum permitted by allowed by the Rule and such time was applied to the 10-hour workdays during the claim period, thereby permitting the gang to leave work early Wednesday April 7, 2004 to travel home for the long weekend.

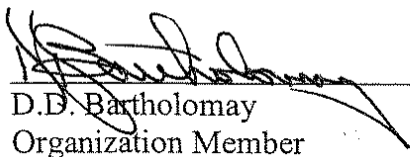
DISCUSSION

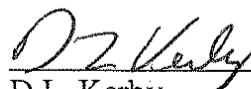
In this non disciplinary claim, it is the Organization's burden to demonstrate that there was a genuine lack of consensus to the make-up time arrangement. Respectfully, given the undisputed facts noted and detailed above, the Organization has failed in its burden. Accordingly, the claim must be dismissed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

CONCLUSION

The claim is dismissed.


Dennis J. Campagna
Chairman and Neutral Member


D.B. Bartholomay
Organization Member


D.L. Kerby
Carrier Member

Dated: June 30, 2007, Buffalo, New York

¹ It was agreed, however, that all time worked beyond 40 hours for that week would be paid at the overtime rate, and pursuant to the Southern Rule, the gang would not make up more than eight (8) hours in any one week.