

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 163

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-CN-04-17-SG-241)

Statement of Claim:

Claim on behalf of the members of the TS-2 Timber and Surfacing Gang requesting that they each shall be allowed one-half hour overtime pay, in that they worked beyond their regularly scheduled ten hour shift on days during the week of July 11, 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 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 one-half hour of pay at the overtime rate for time worked during the week beginning July 11, 2004 and ending July 14, 2004. The circumstances giving rise to the instant claim before this Board are as follows.

T&S-2 is a production crew as identified by Article XVI of the September 26, 1996 National Agreement. The February 6, 1992 Agreement provides in pertinent part that production crews may be established consisting of four (4) ten (10) hour days, followed by three (3) consecutive rest days.

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 T&S-2 worked a four day ten hour workweek.

On or about January 28, 2003, it is undisputed that a majority of employees on T&S-2 submitted a written request to a continuing make up work arrangement whereby the gang would build up time during the Monday through Wednesday workweek in order to leave early on Thursday to allow travel time for the upcoming long weekend. As a result, on July 11, 2004, the Gang worked 12 hours, on July 12th, the Gang worked 12 hours, on July 13th the Gang worked 12.25 hours and on July 14th, the Gang worked a total of 9.5 hours, rounded to a total of 46 hours. Accordingly, the Gang was paid forty (40) hours at the straight time rate and six (6) hours at the overtime rate.

DISCUSSION

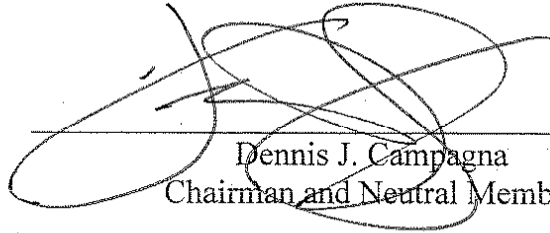
In making a determination based on the facts herein, the Organization, who bears the burden of proof in this case, must be able to point to a specific Rule that supports its claim.

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. Just as those employees who work a traditional five eight hour work day workweek are entitled to avail themselves of the make-up time provisions, there is nothing in the Agreement prohibiting those employees on a production crew established with a workweek of four (4) ten (10) hour days pursuant to Article X from also participating in the make-up time provisions of Article 31 to "work overtime during the week to make up for time off at the week end." This being said, it stands to reason that under Article 31, those employees who work a workweek of four ten hour days receive their overtime for all time worked beyond the normal ten (10) hour day and that time off at the week end is time during the fourth regularly scheduled ten (10) hour day.

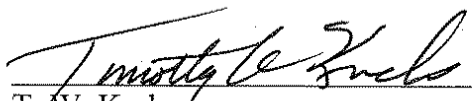
Given the foregoing, there is an insufficient basis in the record to support the Organization's claim.

CONCLUSION

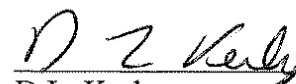
The claim is denied.



Dennis J. Campagna
Chairman and Neutral Member



T. W. Kreke
Organization Member



D.L. Kerby
Carrier Member

March 31, 2008
Dated