

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 165**

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-SOMR-02-09-SG-220)

Statement of Claim:

Claim on behalf of the members of the TS-2 Timber and Surfacing Gang requesting that they each shall be allowed two hours overtime pay in that they worked beyond their regularly scheduled shift during the week of May 20, 2002, but were released early with pay on the last day of the work week as opposed to being compensated two hours 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 two hours of pay at the overtime rate resulting from the Carrier allegedly suspending work on Thursday May 23, 2002 for the purpose of preventing employees from earning overtime upon completion of working forty hours during the work week beginning May 20, 2002. T&S-2 ceased working at 1:30 p.m. on May 23, 2002, and their normal scheduled shift ends at 3:30 p.m. The circumstances giving rise to the instant claim before this Board are as follows.

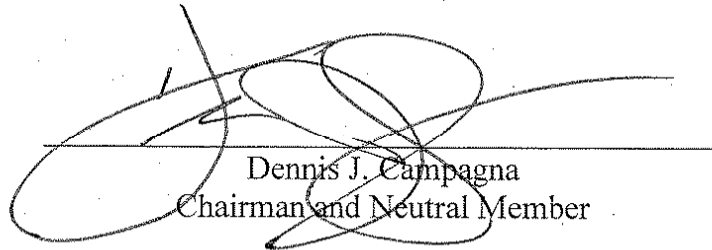
On or about Sunday May 19, 2002, employees working on Timber and Surfacing Gang Number 2 ("T&S-2") verbally acknowledged their desire to extend their normal working hours on Monday, Tuesday and Wednesday of that week pursuant to the make-up time arrangement in order to accumulate sufficient time to leave work early on Thursday May 23, 2002. Leaving work early would provide adequate time for T&S-2 employees to travel home for the long weekend. Accordingly, on Thursday May 23<sup>rd</sup> employees finished work at 1:30 p.m., two hours shy of their normal 3:30 p.m. quit time. It is the Organization's contention that the Carrier purposely suspended work at 1:30 p.m. on May 23<sup>rd</sup> for the sole purpose of depriving T&S-2 employees of overtime due them. In addition, the Organization asserts that the Carrier did not have the approval from a majority of employees on T&S-2 so as to legitimately change the schedule. In support of their contention, the Organization provided a list of 23 names of employees whom it maintained were opposed to the change in schedule. In a subsequent conference, the Carrier provided a listing of 49 T&S-2 employees who comprise the Gang. Simple mathematics provides that 26 employees constitutes a majority.

### DISCUSSION

In making a determination based on the facts herein, the Organization, who bears the burden of proof in this case, must demonstrate that a preponderance of the credible evidence supports their claim. In the instant matter, the record does not provide sufficient evidence to dispute the Carrier's claim that a majority of T&S-2 employees voted in favor of the schedule change noted above, or that a specific Rule was violated in the process. Accordingly, this claim must be dismissed for lack of sufficient evidence.

CONCLUSION

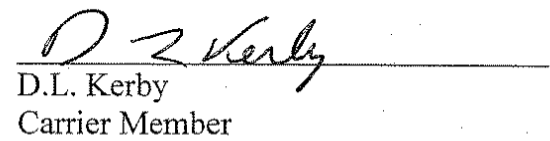
The claim is denied.



Dennis J. Campagna  
Chairman and Neutral Member



T.W. Kreke  
Organization Member



D.L. Kerby  
Carrier Member

March 31, 2008  
Dated