

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 166

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-SOMR-02-14-SG-285)

Statement of Claim:

Claim on behalf of the members of the TS-2 Timber and Surfacing Gang requesting that they each shall be allowed five hours overtime pay, in that they worked beyond their regularly scheduled ten hour shift on days during the week of August 12, 2002, 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 five hours of pay at the overtime rate for time worked during the week of August 12, 2002 when the Gang worked in excess of ten hours on August 12th through August 14th, for a total of five extra hours, but were permitted to leave work early on Thursday August 15, 2002 instead of being paid overtime for the five hours.

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 March 11, 2005, the Carrier was provided with copies of statements from employees of the T&S-2 gang in support of the Organization's contention that a majority of employees on this Gang were not in favor of working a makeup time arrangement during the specific weeks at issue. Each statement is prefaced with the statement that each signatory "at no time agreed to suspend work in order to absorb overtime."

DISCUSSION

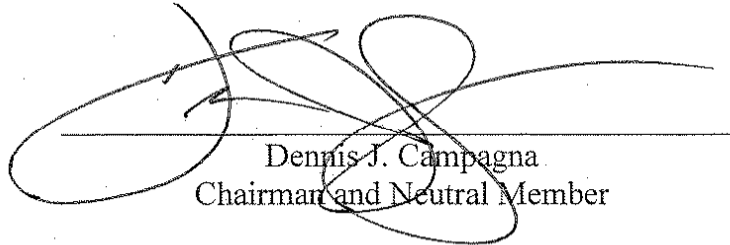
In making a determination based on the facts herein, the Organization bears the burden of proof under the preponderance of the evidence standard. Accordingly, it is the Organization's burden to demonstrate that it is more likely than not that the record evidence supports their claim that employees comprising the T&S-2 Gang were "forced to suspend work for the purpose of absorbing overtime" in violation of Rule 26 of the Agreement.

While the signatories whose names appear on the statement sent to the Carrier supported the claim that at no time did they agree to "suspend work in order to absorbed overtime", the issue to be disputed in the instant matter is the Carrier's assertion that a majority of employees comprising Gang T&S-2 agreed to a make-up time arrangement whereby they would work beyond their normally scheduled ten-hour shift on some days for the purpose of banking sufficient time in order to take off early on the last day of the workweek. Respectfully, upon review of the record evidence, the Board finds insufficient evidence to overcome the Carrier's assertion.


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

CONCLUSION

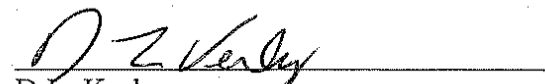
The claim is denied.



Dennis J. Campagna
Chairman and Neutral Member



T. W. Kreke
Organization Member



D.L. Kerby
Carrier Member

March 31, 2008
Dated