SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 167

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-SOMR-02-16-SG-370)

Statement of Claim:

Claim on behalf of the members of the TS-2 Timber and Surfacing Gang requesting that they each shall be allowed eight hours straight time and 42.25 hours overtime pay, in that they worked beyond their regularly scheduled ten hour shift on days during the week, but were released early on the last day of the week during October 7 through November 27, 2002 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 the straight and overtime pay demanded in their stated claim for time worked during the period between October 7th and November 27, 2002. 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.

During the time period at issue, the Claimants worked four (4) ten (10) hour days. However, in addition to their normal work schedule, the Carrier maintains that a majority of the Gang chose to make up time by working some additional hours on Monday, Tuesday and Wednesday for the stated purpose of banking sufficient hours so that they could leave work early each Thursday during the claim period. In its claim, the Organization challenges whether there was a majority vote to work such make up time.

DISCUSSION

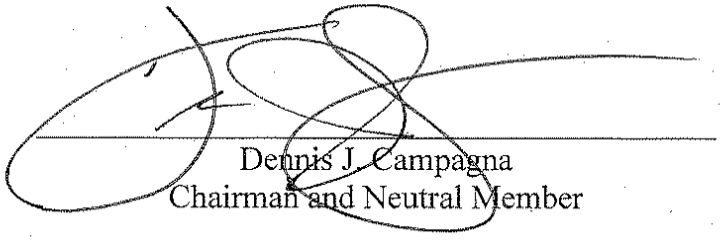
In making a determination based on the facts herein, the Organization bears the burden of proof under the preponderance of the evidence standard. Accordingly, it is the Organization's burden to demonstrate that it is more likely than not that the record evidence supports their claim that employees comprising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

Article X o 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." The question posed by the Organization however is whether the Claimants voluntarily agreed to do so. In reviewing the record, the Board can find no documentation or other credible evidence to dispute the Carrier's claim that a majority of the T&S-2 Gang voluntarily agreed to the make-up time arrangement at issue here or that in the process some

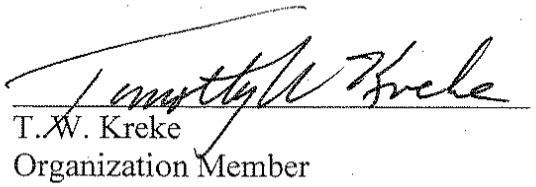
Rule was violated. Accordingly, there is insufficient evidence in the record upon which to sustain the instant claim.

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