

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 170

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-BHAM-00-17-BB-550, MW-BHAM-00-18-BB-551,
MW-BHAM-00-20-BB-553)

Statement of Claim:

Claim on behalf of Alabama Division Bridge Tenders requesting that they be paid overtime for hours worked in excess of eight hours per day as a result of changing to a work schedule using 12 hour shifts and three or four days off per week.

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 payment at the rate of time and one-half for time worked beyond an eight hour day where said Claimants work a schedule consisting of four (4) twelve (12) hour days followed by four (4) consecutive days off. The circumstances giving rise to the instant claim before this Board are as follows.

On or about November 22, 2000, the General Chairman filed a claim maintaining that:

The Draw Bridge Tenders at Sea Brook and North Shore Draw Bridges at New Orleans, Louisiana are at present working 12 hour shifts without a regular assigned work week and are not being compensated at the overtime rate for the hours worked in excess of 8 hours each day. This is a violation of Rules 17, 19, 20, 24 and 26 of the current working agreement.

By letter dated January 12, 2001, the Division Engineer responded where he noted in relevant part that:

The bridge tenders at this location requested to enter into an arrangement where they worked twelve consecutive hours in order to accumulate additional rest periods. The Company was agreeable to the proposed work schedules and the employees commenced a make up time arrangement that extended their days.

The agreement does not prohibit make up time arrangements and moreover does not require the consent of the accredited representative prior to permitting a make up time arrangement. Under certain circumstances in make up time arrangements the agreement requires payment of overtime after forty hours work in a work week.

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 the Carrier "negotiated" with the Bridge Tender employees at issue, that is, bypassed their collective bargaining agent by bargaining directly with unit employees, and/or that the twelve hour work day schedule was prohibited by the agreement.

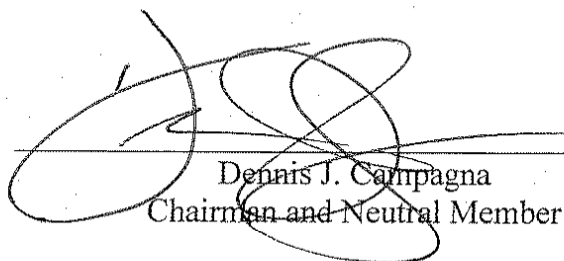
Following a careful review of the record evidence, the Board must conclude that the Organization has not produced sufficient and credible evidence to support its claim. Accordingly, there is no evidence to overcome the claim by the Carrier that the twelve hour schedule was other than an

accommodation initiated by the request of the employees at issue, and that there was no direct dealing with unit employees. In addition, the Organization has not provided cogent evidence that such accommodation was prohibited by the terms of the working Agreement. Accordingly, there is no support in the record for the remedy sought by the instant claim.

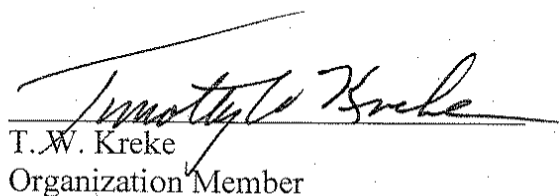
Given the foregoing, there is an insufficient basis in the record to support the Organization's claim.

CONCLUSION

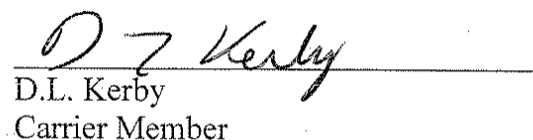
The claim is denied.



Dennis J. Campagna
Chairman and Neutral Member



T.W. Kreke
Organization Member



D.L. Kerby
Carrier Member

March 31, 2008
Dated