# Award Number 17329

# Docket Number MW-18051

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**Arthur W. Devine, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

## CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it required B&B Gang No. 6 to suspend work during their regular assigned work hours and to perform service during overtime hours at straight time rates of pay from December 18 through December 25, 1967 and again from January 2 through January 6, 1968.

(2) Each employe assigned to B&B Gang No. 6 on the dates here involved be allowed eight hours' pay at their respective time and one-half rate for each work day within the periods described in Part (1) hereof."

EMPLOYES' STATEMENT OF FACTS: The claimants were assigned by bulletin to B&B Gang No. 6, with a regular work period extending from 7:30 A.M. to 4:00 P.M. exclusive of a 30 minute meal period.

The claimants' assigned work period was changed on a temporary and irregular basis as set forth in instructions from the Carrier which read:

"Erwin, Tennessee
December 14, 1967

TO ALL CONCERNED:

Work hours of B&B Gang No. 6 will be changed effective Monday, December 18, 1967, as follows; 4:30 P.M. to 1: A.M. with 30 minutes for meal period to be taken at a time agreeable to the majority.

This will be effective until further notice.

/s/d H. C. Brown
Supvr. B&B Forces

cc: Mr. Dale
Mr. Salmon"

(d) Employes working single shifts, regularly assigned exclusively to night service, will start work period between six P.M. and nine P.M.

(e) For regular operation necessitating working periods varying from those fixed for the general force, the hours of work will be assigned in accordance with the requirements."

OPINION OF BOARD: The claim herein arose as a result of the Carrier changing the working hours of Bridge and Building Gang No. 6 from December 18 through December 25, 1967, and from January 2 through January 6, 1968.

Rule 23 of the applicable Agreement reads:

"(a) The starting time of the regular work period for regularly assigned service will be designated by the supervisory officer and will not be changed without first giving employes affected thirty-six (36) hours' notice.

"(b) Employes working single shifts, regularly assigned exclusively to day service, will start work period between six A.M. and eight A.M.

"(c) Employes working single shifts, regularly assigned exclusively to part day and night service, will start work period between three P.M. and six P.M.

"(d) Employes working single shifts, regularly assigned exclusively to night service, will start work period between six P.M. and nine P.M.

"(e) For regular operation necessitating working periods varying from those fixed for the general force, the hours of work will be assigned in accordance with the requirements."

Prior to December 18, 1967, Bridge and Building Gang No. 6 was assigned to work 7:30 A.M. to 4:00 P.M., exclusive of a 30-minute meal period. On December 14, 1967, the Supervisor of Bridge and Building Forces issued notice that the work hours of the gang would be changed, effective December 18, 1967, to 4:30 P.M. to 1:00 A.M., with thirty minutes for meal period. On December 22, 1967, notice was issued that effective Tuesday, December 26, 1967, the work hours of the gang would be from 7:30 A.M. to 4:00 P.M., with 30 minutes for meal period. On December 28, 1967, notice was given that effective Tuesday, January 2, 1968, the work hours of the gang would be changed to 4:30 P.M. to 1:00 A.M., with 30 minutes for meal period. On January 5, 1968, notice was given that effective January 8, 1968, work hours for the gang would be from 7:30 A.M. to 4:00 P.M., with 30 minutes for meal period.

The Petitioner contends that the Carrier's action in changing the working hours of the gang during the periods December 18 through December 25, 1967, and from January 2 through January 6, 1968, was in violation of Rule 23(b) of the applicable Agreement, heretofore quoted.

In the handling of the dispute on the property the Carrier's Supervisor of Bridge and Building forces advised the Division Chairman of the Organization in part:

"The procedure followed is that which in such instances have been followed thruout the years. It is neither new or unusual.

"This gang is a B&B gang with headquarters at Erwin. Their principal work is maintaining the B&B facilities at Erwin and the near vicinity. It is a regular operation to perform such inside construction and/or maintenance as is necessary on all occupied buildings, general office and shop, at a time when there is no work shift of employes or the shift is at a minimum.

"In the instant complaint the regular operation, which is repairs to the occupied interior of the general office building, necessitates the actual work to begin after 5 P.M. and be completed prior to 8 A.M. The members of the gang prefer to begin as early as possible and we, therefore, permitted them to report at 4:30 P.M. at their headquarters so that they may have their tools and equipment and be at work location on or slightly before 5 P.M. The hours of service were assigned in accordance with the requirements, complying with Rules 23(a), 23(b) and 23(e)."

On appeal of the claim to the highest officer of the Carrier designated to handle disputes, the officer advised the General Chairman in part:

"You were not present but probably Mr. Dale will recall, and I am sertain that your predecessor, Mr. Painter, will recall, that when we negotiated the current agreement your proposal on hours of service was quite restrictive and contrary to the practice in effect prior to that time.

"We endeavored to meet your request and did so, largely, but we called attention to the practice of varying from fixed work periods to meet certain situations such as that involved in the instant dispute, and the Committee readily recognized our need and it is for that reason that Section (c) of Rule 23 was written into the agreement."

In its submission to the Board the Carrier states the work of Bridge and Building Gang No. 6 includes the maintenance of the Carrier's General Office Building at Erwin, Tenn.; that the Data Processing Section of Carrier's Accounting Department is located in that building; that it was necessary to make repairs to beams and columns supporting the ceiling and overhead structure in the room in which the Data Processing Section is located, which work could not be performed during the 8:00 A.M. to 5:00 P.M. period without shutting down the Data Processing Section, and which necessitated changing the hours of the Bridge and Building Gang during the periods involved.

Under Rule 23 the starting time of employes may be changed by giving the required thirty-six hours' notice, which was done in our present dispute. It is our considered conclusion that the changed made in the starting time of the gang were permissible under the provisions of Sections (a) and (e) of Rule 23 in order to meet the requirements of the service.

In its submission to this Board the Petitioner also cites and relies upon Rule 30—Absorbing Overtime. The Carrier contends that the application of Rule 30 was not raised during the handling of the dispute on the property.

A review of the correspondence covering the handling on the property bears out the contention of the Carrier in this respect. It is well settled that issues and contentions not raised in the handling of disputes on the property may not be raised for the first time before the Board.

The Claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1969.

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