

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 27920
Docket No. MW-26870
89-3-85-3-641

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak) -
(Northeast Corridor

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

(1) The Agreement was violated when the starting time for Gang Z 192 was changed without giving the Organization sixteen (16) hours of advance notice (System File NEC-BMWE-SD-1056).

(2) As a consequence of the aforesaid violation, each member of Gang Z 192, listed below, shall be allowed pay at their respective time and one-half rates for the period 3:00 P.M. to 7:30 P.M. and at their respective straight time rates for the period 7:30 P.M. to 6:00 A.M. on March 26, 1984.

A. Affonsa	G. C. McIntosh
R. V. Allison	R. A. McKee
W. B. Allison	W. L. McKinnon
A. Andrews	D. McLaughlin
K. R. Briscoe	W. Patton
J. S. Craig	A. N. Plant
W. G. Crook	C. Race
A. Cunha	R. S. Reader
B. B. Davis	D. Shine
H. J. Douglas	W. J. Siwarski
D. Dube	L. M. Slavin
D. A. Dube	B. Sudler
G. T. Eward	C. T. Tarloski
M. Gibson	R. Walls
E. Herndon	L. A. Watson
K. Homier	N. O. Welch
R. Johnson	D. P. Williams
O. Love	G. L. Wilson
J. G. Madron	G. Wright
T. Mathers	J. A. Wright
	M. R. Zimmermann."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the relevant time, Claimants were regularly assigned to gang work with hours from 7:30 P.M. to 6:00 A.M. On March 25, 1984, Claimants were informed that effective March 26, 1984, their starting time would be changed to 3:00 P.M. Although Claimants were given more than 16 hours advance notice of the change, the Carrier did not similarly notify the Organization of the change. Relying upon the requirement in Paragraph 1(b) of the Agreement that starting times of special gangs established by bulletin may be changed, but only upon "16 hours advance notice to the Organization and the employees affected," the Organization seeks compensation for the employees in the amounts set forth in the Claim.

With respect to the Carrier's argument that the Organization did not appeal the matter in a timely fashion to the Assistant Chief Engineer as required by Rule 64, we note that the Organization timely delivered an appeal addressed to the Assistant Chief Engineer but erroneously delivered the appeal to the office of the Assistant Vice President - Labor Relations. There is no evidence that the rights of either party were affected by the Organization's error and "together with the fact that neither side acted deviously, arbitrarily nor capriciously in the technical violations of the rule," we are unwilling to deny the Claim on this basis. Third Division Award 24588.

With respect to the merits, the Organization is correct that the Carrier violated Paragraph 1(b) by failing to notify the Organization of the change in starting time. The Rule clearly requires that the 16 hour advance notification of a change in starting times must be given "to the Organization and the employees affected [emphasis added]."

However, for reasons similar to those discussed above concerning the Carrier's procedural argument, we are not satisfied that under the particular circumstances of this case the employees are entitled to monetary relief. First, we note that the affected employees received notification of the change in a timely fashion and there is no evidence to show that the employees were harmed by the failure of the Carrier to give the notification to the Organization. Second, there is no indication in the record that the Carrier engaged in a practice of failing to give such similar notifications to the Organization. Although in this instance we decline to grant the Organization's request for affirmative monetary relief, we must stress that the Carrier is obligated by the negotiated language to give the required notice to the employees and the Organization.

Form 1
Page 3

Award No. 27920
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Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bevel - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.