

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31261
Docket No. MW-30926
95-3-92-3-786

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(St. Louis Southwestern Railway Company

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

- (1) The Agreement was violated when the Carrier changed the assigned starting time (workday) of Messrs. J. A. Martinez and C. E. Quintana from 7:30 A.M. to 6:00 A.M. beginning August 8, 1991 and continuing through August 21, 1991 in violation of the Agreement (System File MW-91-73-CB/504-9-A).
- (2) As a consequence of the aforesaid violation, Messrs. Martinez and Quintana shall each be allowed twelve and one-half (12 1/2) hours' pay at their respective time and one half rates."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimants were assigned work day hours from 7:30 A.M. to 4:00 P.M. The Organization filed claim on September 29, 1991, alleging violation of Article 2 (Seniority Rules), Article 8 (Promotions and Filling of Vacancies) and Article 16 (General Rules) in that the Carrier changed the 7:30 A.M. starting time of assignment without notice. The Organization alleged that both Claimants began work at the new 6:00 A.M. on duty time with the Rail Grinder on August 8, and worked that position until the completion of their work assignment on August 26, 1991.

The focus of the instant case rests upon whether the Carrier provided the Organization with the required notice. The Organization pursued this claim on the grounds that no notice of change of starting time had ever been provided by the Carrier. It argued on property that neither Claimant knew of the changed starting time from 7:30 A.M. to 6:00 A.M. The Carrier insisted that it provided the notification.

The Organization bases its claim on its assertion that the notice was not given. Certainly it pursued this claim due to the fact that its files did not include correspondence supporting the Carrier's arguments. Despite that missing correspondence, the Carrier included a set of letters beginning on June 1, 1992. Those letters are written both by the Carrier and by the Organization. Taken as a whole, they constitute probative evidence of sufficient weight to support the Carrier's position.

The Board finds that the notice in dispute was provided to the Claimants on August 6, 1991. The full record provides sufficient evidence that the change of starting time was not effective on August 8, but rather on August 16, 1991. The August 6 date of notification was in compliance with the Rule given the actual starting date of the earlier reporting 6:00 A.M. time of duty. The record further supports the fact that the Claimants were aware ten days prior to the change of starting time. The Board finds that even if the attached statement from the Roadmaster were discounted as never sent, the Carrier's letter of June 1, 1992 provides sufficient proof that no violation occurred. The Organization thereafter failed to refute the facts and specifics stated by the Carrier.

Accordingly, the burden of proof has not been met. The claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of November 1995.