

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32517
Docket No. MW-31596
98-3-93-3-601

The Third Division consisted of the regular members and in addition Referee Martin F. Scheinman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation (AMTRAK))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it changed the assigned work shift of the **HLI Construction Gang** from 7:00 A.M. to 3:30 P.M. to 9:00 P.M. to 6:30 A.M. and thereby depriving the Claimants of their contractual right to exercise their seniority to positions of their choice (System File BMW-TC-190 NRP).
- (2) As a consequence of the aforesaid violation, the Claimants* listed below shall each be compensated at their respective rates for all wage loss suffered beginning June 1, 1992 and continuing and the Carrier shall be required to properly establish second and third shifts if it intends to maintain the shift it assigned the Claimants to work.

*Robert Banich
Rodney Pena
Tom Millin
Mitchell Pollard
Tim Anderson
Stephen Cipot
Archie Cooper
Tom Goodrich
Morris Jones
Tommy Webster
Randy Hoover

Manuel Avalos
Arthur Eskridge
Jerome Ferguson
Matt Litster
James Jackson
Darrell Jefferson
William Roche
Paul Swetlik
Miquel Camargo
Pedro Avalos
Santiago Toledo”

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 were given due notice of hearing thereon.

The gravamen of this dispute involves Carrier's change in the working hours of the assigned gang from 7:00 A.M. - 3:30 P.M. to 9:00 P.M. - 6:30 A.M. Carrier alleged that this change was occasioned due to service requirements. The Organization alleged that this change could only be accomplished by abolishing and bulletining the positions for which the Claimants had applied. It is undisputed that the change was made here without abolishing and bulletining the positions. The Organization claims a violation of Rule G - Shifts, Starting Time and Meal Periods and Rule H - Overtime.

Carrier, on the other hand, insists that its actions did not violate the Agreement. First, it claims that Rule G was not violated. In Carrier's view, Rule G affords Carrier the right to establish any shift's starting time between 6:00 A.M. and 12:00 A.M. to meet its service requirements. Carrier also argues that Rule H provides no basis for supporting the Organization's claim.

After review of the evidence and argument submitted, we must conclude that there is no Agreement support for the Organization's claim. After all, what occurred here was not a change in starting times as contemplated by Rule G. Nor can Rule H be cited as Agreement support for the Organization's claim.

However, we feel compelled to comment on what we perceive to be a sharp practice here. While we have rejected any claims for remedy under these unique facts, we place Carrier on notice that in the future when it wishes to accomplish the type of wholesale change instituted herein, it must bulletin the positions with the new hours of

work. Otherwise, the basic seniority principles underlying the Agreement would be made illusory. This we are neither empowered nor inclined to endorse.

In any event, for all the foregoing reasons, this claim is 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 25th day of March 1998.