

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32803
Docket No. SG-33598
98-3-97-3-35**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Seaboard Coast
(Line Railroad Company)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation Company (former Seaboard Coast Line):

Claim on behalf of J.A. Pinkston, G.L. Trice, J.L. Lamar, D.L. Holmes, and M.J. Day for payment of 216 hours each at the straight time rate and 226 hours each at the time and one-half rate, and J.R. Bargione for payment of 176 hours at the straight time rate and 176 hours at the time and on-half rate, account Carrier violated the current Signalmen’s Agreement, particularly Rules 10 and 12, when it required the Claimants to suspend work on their regular assignment and changed their starting time to 10:00 p.m., beginning October 23, 1995. Carrier’s File No. 15 (96-104). BRS File Case No. 10158-SCL.”

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.

This dispute involves Carrier's decision to change the starting time of Signal Gang 7X09 from 7:00 A.M. to 10:00 P.M. beginning October 23, 1995, for a period of approximately six weeks. Carrier gave notice to the Organization and advised that the change was "mandated by the extreme volume of commuter rail traffic" on the Miami Subdivision during daylight hours and Carrier's ability to have a complete curfew of all traffic during the night.

Subsequent to the notice, the General Chairman advised Carrier of his disagreement with the change of starting time to which Carrier responded that it was willing to discuss the General Chairman's concerns with the change being implemented, and set a meeting date to discuss same. The General Chairman failed to attend the scheduled meeting and/or seek a new conference date.

Carrier contends it had a right under Rule 10 to establish a second shift commencing at 10:00 P.M., to which the Organization responded that the Rule provides for a starting time of 10:00 P.M. only when two shifts are worked, and in this case a second shift was not added, the starting time of the one shift of construction forces was changed to 10:00 P.M.

Rule 10 of the Agreement carries a Note reading:

"NOTE: Starting times other than those provided for herein may be agreed upon by the parties for Signal Gangs or for regular maintenance assignments involving service which is affected by environmental conditions or governmental requirements or for work that must be coordinated with other operations in order to avoid substantial loss of right of way access time. If the parties fail to agree on such other starting times, the matter may be referred to binding arbitration. (Eff. 9/15/92)" (Emphasis added)

The language of the Note is clear and unambiguous in recognizing there will be occasions necessitating variance from the provisions of the Rule. Carrier found itself in a position where a variance in starting time was necessary for the Signal Gang to perform its work in an orderly and efficient manner without loss of right-of-way access time.

The Note provides that starting times other than those provided in the Rule may be agreed upon by the parties, and if they fail to agree, the matter may be referred to binding arbitration.

The problem with this dispute is that the General Chairman failed to accept Carrier's invitation to meet and discuss his concerns with changing the starting time to 10:00 P.M. Thus, he made no effort to agree on a change of starting time satisfactory to Carrier and the employees.

Having failed to exhaust the Agreement requirements to meet and attempt to work out an agreement on the necessary changes to meet the service requirements of Carrier, we conclude that the claim is prematurely before the Board. This is so because the provisions of the Note clearly state that "If the parties fail to agree on such other starting times, the matter may be referred to binding arbitration."

The General Chairman having failed to meet with Carrier and make a sincere effort to agree upon a starting time change, the Board is without authority to consider the issue, and accordingly, the claim will be dismissed for lack of jurisdiction to decide the issue. See Second Division Awards 10964, 7830, 6691, 4605, 2798, as well as Third Division Awards 32, 447, 28337 and 26220.

AWARD

Claim dismissed.

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 23rd day of September 1998.