

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 34015
Docket No. MW-31537
00-3-93-3-535**

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

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned the position of a camp cook on the TM-234 Tie Gang a different starting time than that assigned to the rest of the tie gang forces (System Docket MW-2633).**
- (2) As a consequence of the aforesaid violation, Mr. E. N. Hartley shall . . . be compensated for 2 hours a day pay at the rate of time and one-half commencing with August 12, 1991 and continuing in accordance with Rule 26(f) until his starting time is returned to that of the remainder of the TM-234 gang.”**

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 case involves a claim by the Organization that the Carrier violated Rules 11(a) and 12(b) of the Agreement when it assigned the Claimants E. N. Hartley, W. L. Eaton, J. M. Meloni, R. S. Lewis and B. E. Null, all of them Camp Car Cooks assigned to various gangs, to hours of work different from the 7:00 A.M. to 5:30 P.M. tour of duty assigned to those gangs. While Cooks previously have commenced work prior to the assigned starting time and continued to work after completion of the regular work day (acknowledged to be a necessity in order to prepare meals for the forces assigned to their particular gangs) such work has customarily and traditionally been performed as overtime service. However, effective April 8, 1992, the Carrier assigned each Claimant a starting time of either 6:00 A.M. with a quitting time of 4:30 P.M., or 8:00 A.M. with a quitting time of 6:30 P.M., with 30 minutes designated as a lunch period. Under this schedule, the cooks perform no overtime service.

“Rule 12 reads as follows:

- (a) Except as otherwise provided, time of employees will start and end at their advertised headquarters.**
- (b) Daylight assignments shall start between 6:00 A.M. and 8:00 A.M., however track production gangs may be required to start between 5:00 A.M. and 8:00 A.M. from May 1 through September 30.**
- (c) Starting times outside the hours specified in paragraph (b) of this rule may be established by agreement, in writing, between the Chief Regional Engineer and the designated union representative.**
- (d) Starting time will not be changed without first giving employees affected thirty-six (36) hours posted notice and then not more often than every seven (7) days.”**

According to the Organization, Rule 12(b) delineates the permissible start times for an entire production gang. It asserts that the Rule does not permit the Carrier to assign individual employees to a starting time different from their production gang. The Organization maintains that the Camp Car Cook is a regularly assigned position to Switch Interlocking Gang SI-233, Tie Gang TM-234 and Surfacing Gang SM-231, and the Cooks assigned to each gang, therefore, must be assigned the gang's regular starting time. The Organization further argues that the staggering of the Cooks' start times

impermissibly deviates from past practice and under Award 46 of Special Board of Adjustment No. 1016, is a prohibited attempt to absorb overtime.

The Carrier, on the other hand, asserts that Award 46 of Special Board of Adjustment No. 1016 is inapposite. That case, the Carrier argues, involved the Carrier's attempt to designate three hours of unrestricted "free time" within the ten-hour daily tour of duty as a basis for denying an employee overtime pay for preparing gang meals before and after his regular tour. According to the Carrier, that assignment was deemed a violation of Rule 11(i), which reads: "[a]n employee will not be required to suspend work for the purpose of absorbing overtime."

Rather, the Carrier argues, this case involves the bulletining of Cooks' assignments in a manner authorized by the Board in Third Division Award 31714. In that Award it was determined that Rule 12 does not preclude the Carrier from staggering Cooks' starting times so long as the assignments satisfy the requirement that daylight assignments start between 6:00 A.M. and 8:00 A.M. from October 1 through April 30, and between 5:00 A.M. and 8:00 A.M. from May 1 through September 30.

After reviewing the record evidence, we have determined that the Organization's claim should be denied. Our review of the record demonstrates that this case involves the same issues and same Rule presented in Third Division Award 31714. In Award 31714, the Board rejected the Organization's argument that all assigned hours of anyone working within a gang must be the same. So, too, the Board ruled that Award 46 of Special Board of Adjustment No. 1016 does not apply to these facts. We find no basis in the record to deviate from the Board's prior Award. Accordingly, the claim must be denied.

AWARD

Claim denied.

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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 19th day of April, 2000.