

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35300
Docket No. MW-33166
01-3-96-3-595**

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

**(Brotherhood of Maintenance of Way Employees
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 camp cook on the SM-201 and TO-201 Gangs different starting times than that assigned to the rest of the SM-201 and TO-201 Gang forces (System Dockets MW-3895 and MW-3896).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. L. A. Harlan shall ‘ . . . be compensated for all overtime earned by the SM-201 Gang since April 17, 1995, and continuing, so as to be made whole’ and Mr. S. F. Miller shall ‘ . . . be compensated for all overtime earned by the TO-201 Gang since April 17, 1995, and continuing, so as to be made whole.’”**

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.

In 1991, Special Board of Adjustment No. 1016, Award 46 held in accord with a claim filed by the Organization that a Camp Car Cook had to be paid overtime for the pre and post-shift preparation of meals because the appropriate Rule provided that overtime had to be paid for work before and after a scheduled tour.

In 1992, the parties amended Rule 12 which provides, in relevant part at 12(e) that “[t]he starting times for production units shall be between 4:00 A.M. and 11:00 A.M. . . .” Rule 12(e) further provides that “[p]roduction units include all supporting BMWE employees who are advertised to work with, or as part of, a production unit.”

This dispute arose after the Carrier advertised two Cook positions with staggered work schedules effective April 17, 1995 (4:30 A.M. to 3:00 P.M. and 10:00 A.M. to 8:30 P.M.). The Gangs worked hours different from the Cooks, but within the window specified in Rule 12(e). The effect of the Carrier’s bulletining the Cook positions with those hours permitted the Carrier to be able to have a Cook available to prepare the morning meal and stay late to clean up after the evening meal.

Nothing in the relevant Rule prevents the Carrier from establishing staggered starting times for the Cooks to meet a gang’s needs or at times different from the gang’s hours. With respect to Rule 12, the only requirement is that the Cook’s hours must fall within the window specified in Rule 12(e). The bulletined hours for the Cooks fall within that window. Nor do we find support for the Organization’s position in Rule 24. While Rule 24 addresses overtime, that Rule similarly does not preclude the Carrier from establishing a Cook’s hours different from the gang’s hours.

The claim will be denied for lack of Rule support.

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 24th day of January, 2001.