

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22758
Docket Number MW-22733

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Norfolk and Western Railway Company (Lake Region)

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

(1) The Agreement was violated when the assigned hours of service of Extra Gang T-6 were changed from 7:30 AM -- 4:00 PM to 5:30 AM -- 2:00 PM.

(2) The Agreement was additionally violated when the starting time for Extra Gang T-6 was changed without giving thirty-six (36) hours of advance notice to the members of said gang.

(3) As a consequence of either or both (1) and/or (2) above each member of Extra Gang T-6 (identified by name in the letter of claim presentation) shall be paid one-half (1/2) at their straight time rate between 5:30 AM and 7:30 AM and two (2) hours at their straight-time rate between 2:00 PM and 4:00 PM beginning May 20, 1977 up to the date Carrier returned the claimants to their regular assigned hours of service. (System File MW-BRS-77-16)"

OPINION OF BOARD: Claimants, assigned to Extra Gang T-6, were regularly assigned the work period from 7:30 A.M. to 4:00 P.M., exclusive of a thirty (30) minute meal period. Effective May 20, 1977, Claimants work period was changed to begin at 5:30 A.M. and end at 2:00 P.M.

The Organization claims that the change in starting time on May 20, 1977, violates Rule 28(a) of the Agreement because sufficient notice for changing starting time was not provided. The Organization also argues that the starting time of 5:30 A.M. itself is not permissible under Rule 28(b). Claimants' starting time must fall between 6:00 A.M. and 8:00 A.M.

Carrier contends that it has not violated Rule 28. It insists that Claimants were aware that a new starting time was contemplated long before the actual change on May 20, 1977, and, therefore, 28(a) was not violated. As to Rule 28(b), Carrier argues that the employees on Extra Gang T-6 were agreeable to starting work at 5:30 A.M.

Rule 28 of the Agreement between the parties states:

Rule 28. Starting Time.

(a) Starting time of the work period for regular assigned service will be designated by the supervisory officer and will not be changed without first giving employees affected thirty-six (36) hours' notice.

(b) Employees working single shifts, regularly assigned exclusively to day service, will start work between 6:00 A.M. and 8:00 A.M.

Rule 28(a) is clear and unambiguous. It requires that affected employees be given thirty-six hours notice before altering the starting time. The evidence indicates that formal notice was not given until 7:30 A.M. on May 19, 1977. This is but twenty-two hours prior to the new starting time. As such, the 36 hour requirement was violated. Therefore, due to the violation of Rule 28(a), Claimants are entitled to overtime pay for the two hours between 5:30 A.M. and 7:30 A.M. on May 20, 1977.

Claimants were single shift employees regularly assigned to day service. Rule 28(b) governs this situation. It mandates that such employees start work between 6:00 A.M. and 8:00 A.M. This language is mandatory. It is binding on all parties. Claimants were assigned from May 20, 1977 - June 14, 1977, to begin work at 5:30 A.M. This is a direct violation of Rule 28(b). The fact that the employees may have been agreeable to begin work at 5:30 A.M. is irrelevant. This Board has consistently held that individuals cannot agree to an arrangement which is contrary to the terms of the Agreement. See, for example, Third Division Award 2849. Thus, to remedy the violation of Rule 28(b), Claimants shall be paid overtime for the 30 minutes per day (the time worked prior to 6:00 A.M.) from May 21, 1977 through June 14, 1977.

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

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The Agreement was violated.

A W A R D

Claim sustained to the extent and in the manner set forth in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.