

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31714
Docket No. MW-31369
96-3-93-3-381**

The Third Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

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

STATEMENT OF CLAIM:

- “(1) The Agreement was violated when the Carrier failed and refused to assign uniform starting times for all cooks assigned to work on Rail Patch Gang 202 and instead assigned staggered starting times beginning October 15, 1991 (System Docket MW-2524).**
- (2) As a consequence of the aforesaid violation, Mr. W. J. Shetty shall be allowed one (1) hour's pay at his time and one-half rate and Mr. J. L. Briscoe shall be allowed one (1) hour's pay at his time and one-half rate for each day their assigned starting times were other than the assigned starting time of the other forces assigned to Rail Patch Gang 202, beginning October 15, 1991 and continuing until the violation ceases.”**

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 Carrier established a production gang with the assigned hours of 7:00 AM to 5:30 PM, Monday through Thursday. To work with this production gang, Carrier established two cooks positions. One position, the early cook, was assigned hours of 5:00 AM to 3:30 PM. The late cook was assigned from 8:00 AM to 6:30 PM.

These assignments were made in June of 1991. In November, the Organization filed claim retroactive to October 15, on behalf of the two cooks contending the assignments were in violation of the existing Agreement. It is their position that Carrier cannot stagger the assigned hours of anyone working with a gang, and that all assigned hours within a gang must be the same.

The Organization relies upon Rule 12, which 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 times 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.”

Nothing in the aforequoted rule precludes the Carrier from bulletining the cooks assignments in the manner they have. As long as the starting time was between 6:00 AM and 8:00 AM, October 1 through April 30, or 5:00 AM and 8:00 AM, May 1 through September 30, the assignments were correct.

The Carrier did adjust the early cook's compensation as it continued the 5:00 AM starting time past the September 30 deadline, pursuant to Rule 12(b) but that is not before this Board for adjudication, nor does this Board find that Award 46 of Special Board of Adjustment No. 1016 is on point with this dispute.

The claim is denied. The Carrier violated no schedule rule and/or agreement that has been made known to this Board.

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 September 1996.