

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33416
Docket No. MW-32281
99-3-95-3-110

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to allow Mr. J. Hiltz to exercise his seniority to a welder helper position on Maintenance/Bridge Opening Gang A-232 on December 31, 1993 (System File NEC-BMWE-SD-3362 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Hiltz shall be allowed ten (10) hours' pay at the welder helper's rate for December 31, 1993, holiday pay for the New Year's Day holiday and any incentive pay he may have lost as a result of the Carrier's actions.”

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 Claimant attempted to exercise seniority bumping to Welder/Helper position in Gang A-232 on Friday, December 31, 1993. Prior thereto, he had a telephone conversation with Supervisor Holmes about the starting time for the gang. There is no dispute that the advertized hours of the gang show an 8:00 A.M. starting time. When Claimant arrived that morning at 7:30 A.M., he was informed that he was too late as the Gang's starting time was 7:00 A.M.

The Organization argues that the advertized starting time had never been changed and remained as posted on recent Amtrak Advertisements as 8:00 A.M. The Claimant alleges that after being bumped he contacted Supervisor Holmes and "was told the gang worked Fri, Sat, Sun and Mo, 8:00 A.M. to 6:30 P.M." The Claimant's written statement strongly asserts that he was told by the Supervisor that the position started at 8:00 A.M.

The Carrier argues that the Gang's hours had been changed to a 7:00 A.M. starting time. Although it acknowledges that the change was not made to the Bulletin, it argues nevertheless that the change was clearly made and known. In fact, the Carrier includes a statement from Supervisor Holmes that in his December 29, 1993 telephone conversation with the Claimant, he informed the Claimant of the 7:00 A.M. starting time.

On the record, there is no proof that the November 13, 1992 interoffice memo on change of time was presented on the property. Carrier initially states the memo was attached to its first denial, but after challenge by the Organization that it was not attached, does not rebut. Accordingly, it is not properly before us.

What is before us are Rules and disputed facts. Rule 42(f) allows a change in starting time hours up to one hour with posted notice and without readvertisement. The Organization's reliance on the advertised Bulletin of an 8:00 A.M. start time is therefore not decisive. Although the posted notice was alleged, but not properly presented on the property, there is no dispute on the fact that the entire Gang had started work on both December 31, 1993 when Claimant arrived at 7:30 A.M. and on January 2, 1994, when he was able to displace on the position.

The Board is therefore left to determine from the factual record what was said to the Claimant. Claimant alleges the Supervisor informed him of an 8:00 A.M. starting time. His handwritten statement is however rebutted by a signed statement of Supervisor Holmes that "he was informed that the starting time was 7 A.M." In applying a balance to these irreconcilable statements, we find no reasoned determination to consider one having more weight than the other. There is no evidence in this record that either party had motive to deceive, misrepresent or misportray events. As such, this Board cannot conclude that one side or the other has factual evidence so substantial as to persuade us as to their correctness. In fact, this case reduces to a dispute in facts for which we have no ability or authority to resolve. We have no alternative therefore, except to dismiss the claim.

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 13th day of July 1999.