

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 35720  
Docket No. MW-33790  
01-3-97-3-270**

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

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

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Repairman M. D. Leiberton a different starting time than the assigned starting time of the rest of his gang (System Docket MW-4207).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be allowed four (4) hours' pay per day at his time and one-half rate beginning August 28, 1995 and continuing until the violation ceases and he shall be given proper credit for vacation and benefit purposes.”

**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.

Rule 12 (Starting and Ending Time and Changes Therein) provides, in pertinent part, that:

**“(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.**

**(e) The starting times for production units\* shall be between 4:00 a.m. and 11:00 a.m. and shall not be changed without thirty-six hours notice, except that forty-eight hours shall be given for a change which is greater than four hours. Starting times shall remain in effect for at least five consecutive days. The BMW E may contest the creation of new starting times through the arbitration procedure set forth in Article IX (July 28, 1992 Agreement). If the Carrier wishes to start a crew so early that a convenient restaurant is not open, or end work so late that a meal cannot be obtained, it will be the responsibility of the Carrier to provide a meal to those employees at the work site or other place appropriate, convenient and safe to its employees.**

**(f) Other starting times may be agreed upon by the parties for production units\* or for regular assignments involving service which is affected by environmental conditions or governmental requirements or for work that must be coordinated with other operations in order to avoid substantial loss of right of way access time; however, no production unit\* or regular assignment shall have a starting time between midnight and 4:00 a.m. If the parties fail to agree on such other starting times, the matter may be**

referred to arbitration in the manner described in Article IX (July 28, 1992 Agreement). Similar notice requirements regarding start times, as described above, shall apply.

(\*) Production units include all supporting BMW employees who are advertised to work with, or as part of, a production unit."

A careful review of the record indicates that the Carrier changed the starting time of the Claimant, a Repairman assigned to Gang TO401 from 6:00 A.M. to 10:00 A.M. and that this starting time differed from the starting time of the other members of the production unit, Gang TO401. Rule 12 does not contain any explicit direction, guidance, or reference about the right of the Carrier to take such action. Rule 12 does not specifically authorize or prohibit assigning a different starting time. In particular, Rule 12 does not contain a clear and unambiguous reference that all members of a production gang or a production unit must have identical starting times. Rule 12 also omits any clear and unambiguous language that specifies that the Carrier may assign different starting times to different members of a production gang or a production unit.

In the absence of any such explicit provision, the Organization necessarily failed to meet its burden of proof in the present matter. The arbitral precedent set forth in the record, which involves the starting times for Camp Car Cooks, supports the position of the Carrier. See Third Division Award 34015. Such precedent, however, involves a significantly different job classification and somewhat different circumstances. Nevertheless, such precedent buttresses the inescapable conclusion that insufficient evidence exists in the present record regarding Rule 12 to preclude the Carrier from taking the disputed action. See Third Division Award 31714.

### **AWARD**

**Claim denied.**

**Form 1**  
**Page 4**

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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 October, 2001.**