Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39926
Docket No. MW-39889
09-3-NRAB-00003-070045
(07-3-45)

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

(Brotherhood of Maintenance of Way Employes Division –
(IBT Rail Conference
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier changed the starting time for the employes assigned to Track Construction Gang CH30, the single shift gang headquartered at Chicago Union Station, from 7:00 A.M. to 11:30 P.M. beginning on August 22 and continuing through August 26, 2005, and when it failed to properly compensate said employes for those dates (System Files BMWE-528 and BMWE-529 NRP).

(2) As a consequence of the violations referred to in Part (1) above, Messrs. J. Ortiz, B. Murphy, S. Johnson, A. Stevenson, R. Covarrubias, J. Guillen, J. Irribarrin, D. Smith, R. Roan, R. Segura, J. Lomeli, D. Barnum, P. Avalos, M. Avalos and B. Yeates shall now each be compensated at their respective time and one-half rates of pay for all hours worked outside of the hours of 7:00 A.M. to 3:30 P.M. and eight (8) hours at their respective straight time rates of pay for suspending their normal tour of duty, for each day beginning on August 22 and continuing through August 26, 2005."

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 facts giving rise to the instant case are not in dispute. The Claimants comprised Track Construction Gang CH30 at Chicago Union Station, working Monday through Friday, 7:00 A.M. - 3:30 P.M. when, on August 17, 2005, the Carrier notified them as follows:

> "This letter serve (sic) as a written notice to the (Track Construction Gang CH30) and all parties involved that effective August 22, 2005, your work shift has been changed from (First Shift) 7:00 am-3:30 pm to a (Third Shift) starting time 11:00 pm-7:30 am. This letter also serves as a 36 hr notice of said changes in shift, per BMWE agreement Rule 10; page 6."

The notice went on to quote Rule 10(1) which provides:

> "One, two or three shifts may be established where necessary to meet service requirements. The starting time of any shift or position may be changed on thirty-six (36) hours notice to the employee effected. Employees working single shifts regularly assigned exclusively to the day service will start work between 6:00 a.m. and 8:00 a.m. The starting time for employees assigned to a second shift will be according to requirements. Where three shifts are regularly established no shift will have a starting time between 12:00 o'clock midnight and 6:00 a.m."

The Organization contends that the Carrier violated Rule 10 which, in the Organization's view, mandates that day shift assignments begin between 6:00 A.M. and 8:00 A.M. The Organization urges that to effectuate its desired change, the Carrier was required to abolish the day shift positions on Gang CH30 and rebulletin them as night shift positions.

The Carrier asserts that it did not violate Rule 10. The Carrier urges that it exercised its managerial prerogative and determined that there was a need to perform surfacing work on main tracks at Lake Street at a time that would minimize disruption to train traffic. In accordance with Rule 10, the Carrier argues, it served the required three days' notice on the employees. The Carrier contends that it first changed the Claimants' shifts from day shift to night shift and then changed their start times. All was done, in the Carrier's view, in accordance with Rule 10.

Both parties cited numerous Awards in support of their positions. We reviewed the Awards cited and find that none are directly controlling. Some involve changes in rest days rather than changes in starting times. Others involve Agreements with language that differs from the language of Rule 10.

There is no dispute that the Carrier gave the required 36 hours' notice. The critical question is whether Rule 10 permitted the Carrier to make the change detailed in the notice. This requires the Board to consider the relationship between the third and fourth sentences of Rule 10(1). The Carrier contends that the third sentence does not apply because at the time the change in start times took effect, the Claimants were no longer "assigned exclusively to the day service," because their shifts had already been changed. Consequently, under the fourth sentence of Rule 10(1) the Carrier could establish the Claimants' start times as required.

The Carrier's interpretation would effectively negate the third sentence of Rule 10(1). Any time the Carrier wanted to change the start times of employees regularly assigned to day service to a time outside the parameters mandated by the third sentence, i.e., between 6:00 A.M. and 8:00 A.M., it could do what it did in the instant case, i.e., purport to change their shifts and then change their start times. When parties agree on specific language in an Agreement Rule, we presume they intend such language to be given effect. There is no evidence that the parties intended the third sentence of Rule 10(1) to be illusory, yet the Carrier's

interpretation would render it so. We conclude that the Carrier violated Rule 10(1) when it changed the Claimants' start times to a time outside the parameters of 6:00 A.M. - 8:00 A.M. mandated by Rule 10 for employees regularly assigned exclusively to day service.

Our holding does not unduly impede the Carrier's managerial prerogatives. As the Organization pointed out, if the Carrier needed to alter the shift for reasons of efficiency, it could have abolished the existing positions and rebulletined them as second shift positions. Doing so would have enabled the Claimants to exercise their seniority. By acting in the manner that it did, the Carrier deprived the Claimants of this valuable contractual right. The remedy sought by the Organization is consistent with the remedy the Board has already ordered for a similar violation. See Third Division Award 27848.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of August 2009.