

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40329
Docket No. MW-40527
10-3-NRAB-00003-080023**

The Third Division consisted of the regular members and in addition Referee Sherwood Malamud when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company (former Missouri
(Pacific Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier changed the starting times for Gang 1185 Welder D. Currie; Welder Helper E. Luth; Gang 1103 Track Foreman D. Koeberlein; District Rail Truck Operator T. Ferguson; Gang 1113 Machine Operators D. Arnold, D. Shoemaker; Gang 8190 Machine Operators N. Dial, R. Featherling, Machine Operator Helper C. Hyde; Gang 1382 Machine Operator D. Morrison; Gang 1107 Trackman M. Webster; and Gang 1156 Welders D. Frye and M. White during the period beginning August 9 through September 15, 2006 and continuing (System File CEI00406R/1463214 MPR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants D. Currie, E. Luth, D. Koeberlein, T. Ferguson, D. Arnold, D. Shoemaker, N. Dial, R. Featherling, C. Hyde, D. Morrison and M. Webster shall now be compensated ‘. . . for the difference in pay between what they did receive at the straight rate and what they should have received at the overtime rate for all time worked between the hours of 3:30 PM and 8:30 PM during the period beginning August 9, 2006**

through September 15, 2006 (both dates inclusive) and continuing.’ and Claimants D. Frye and M. White shall now be compensated ‘. . . for the difference in pay between what they did receive at the straight time rate and what they should have received at the overtime time rate for all hours worked between the hours of 5:30 PM and 8:30 PM during the period beginning August 9, 2006 through September 15, 2006 (both dates inclusive) and continuing.’”

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.

Gangs 1107, 1113, 1156, 1185, 1382, and 8190 are headquartered with fixed starting times. The Organization claims that the Carrier changed the starting times for these gangs without giving 36 hours notice as required by Rule 32, which reads as follows:

“Regular assignments, except as otherwise provided, will have designated headquarters, and will have a fixed starting time. The starting time will not be changed without at least thirty-six (36) hours notice to the employees affected, except as otherwise agreed between the employees and local supervisory officer based on actual service requirements.”

The on-property record contains a statement from Manager Iman. He stated that he provided the 36 hour notice required by Rule 32. There is no conflicting statement from any of the many Claimants assigned to the six gangs involved in this claim. Consequently, Manager Iman's statement stands un-refuted. As such, it is accepted as fact by the Board.

The Organization argues that even if the Carrier provided 36 hours notice, the change in start times was not based on "service requirements," a necessary element to changing starting times. The times were changed for the Carrier's convenience. The Organization cites Third Division decisions in support of its position. A change in start times without a service need was found to violate Rule 32 or the counterpart to this Rule extant when Awards 4109 and 4461 were rendered.

In response to the Carrier's assertion that the changes in start times were made in response to the employees' request, the Organization counters with Third Division Award 23461. Therein the Board held that agreements between the carrier and individual employees do not serve to modify the terms of the Agreement between the Organization and the carrier. Employees signed an agreement to be paid at straight time rather than overtime rates, as required by the Agreement, so as to avoid layoff. The Board held that such individual agreements could not serve to change clear contract language.

Rule 32 provides employees and on site supervision the ability to change start times. Here, the employees approached Manager Iman to change the start times to conform to the start times of the mobile gangs in the area and to return to the regular start times on the mobile gangs' off days. The changes were initiated by the Claimants for their convenience. Thus, Award 23461 is distinguishable from this case. The individual agreement in 23461 attempted to modify clear contract language. Here, the understanding between on site supervision and the Claimants is contemplated by the contractual language. Therefore, the Board concludes that the Carrier gave the notice required by Rule 32 and changed the start times at the behest of the Claimants, but did not violate Rule 32.

AWARD

Claim denied.

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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 1st day of March 2010.