Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41778
Docket No. SG-41871
13-3-NRAB-00003-120177

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of Northern District Signal Employees, for $0.65 per hour on behalf of any incumbent holding the positions which Carrier advertised incorrectly in violation of Agreement Rule 22. Carrier should also be required to issue a correction notice for those advertisements stating, 'Plus $0.65 per hour incentive pay for all hours worked.' Carrier's File No. BRS-SD-1144. BRS File Case No. 14607-NRPC(N)."

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.

By Advertisements dated August 26, 2010, the Carrier established one Signal Foreman, two Signal Helpers, one Signalman and one Signal Maintainer position to support a Track Laying System (TLS) Gang. Each of the five advertised positions had work hours between 7:00 A.M. and 3:30 P.M. with Saturday/Sunday rest days. They were each posted at the appropriate hourly rate of pay for the position, but with no added incentive pay. The claim requests a reposting of the positions with the incentive pay included, and seeks an additional $0.65 per hour pay for these positions for the duration of the assignments.

The pertinent portions of Rule 22, relied upon by the parties, appear below.

"RULE 22 - STARTING TIME HOURS

(b) The starting time of the work period of employees, where one shift is worked, and the first shift where two or more shifts are worked, shall be established between 6 AM and 8 AM. The tour of duty of regular assignments shall not begin or end between 12:01 AM and 6:00 AM. (C&S Gangs may be required to start between 5 AM and 8 AM from May 1 through September 30).

* * *

(d) Starting times other than those set forth in paragraph (b) of this Rule may be established for C&S Employees/Gangs working in or in connection with the following gangs:

1. C&S Construction/Rehabilitation Gangs . . .

5. Track Laying System Gangs . . .

* * *

Employees working in or in connection with any of the Gangs designated in paragraph (d) shall be paid an incentive allowance of

65 cents per hour for all hours worked. The incentive allowance shall be considered separate and apart from the basic rate of pay and shall not be subject to cost-of-living or general wage increases.

C&S Employees holding positions in accordance with this paragraph will not be used to fill casual vacancies in other areas for the purpose of avoiding payments.

The Chief Engineer-C&S will notify the General Chairman prior to establishing any position covered by this paragraph."

The Organization argues that the language of Rule 22(d) is clear and unambiguous, and reveals that the incentive allowance is tied to working with a Rule 22(d) gang, not to the starting time exemption, noting that the language is permissive and makes no differentiation as to whether the listed gang has a starting time outside of the parameters set forth in paragraph (b) or not. It provides two examples of prior postings for C&S Maintainers with starting times of 6:00 A.M. who were working as Tie Gang or TLS support and had the $0.65 incentive pay listed in the Advertisements in support of its position that the incentive was tied to performing heavy construction and rehabilitation work with these gangs, and not to their starting times. The Organization asserts that the Board must apply the Agreement as written and sustain its claim.

The Carrier contends that the clear intention of the incentive language of Rule 22(d) is to provide additional compensation to employees working in or with any of the listed gangs who have established starting times outside of the parameters of paragraph (b) under the language of Rule 22(d). It notes that, in the present case, although the Advertisements protested were for positions working in support of a TLS gang, because their starting times were 7:00 A.M., they were not positions established under Rule 22(d), but, rather, were established in accordance with Rule 22(b). The Carrier argues that the incentive pay was not used to draw personnel to the gangs regardless of their starting times, but was to act as an incentive for personnel to work other than daytime hours, as can be seen with the language contained in Rule 37 dealing with C&S Protection/Support positions, which provides that such positions work the same hours as the construction/rehabilitation gangs they are supporting and that, "if the start time of such gangs/positions are

such that the C&S Construction Rehabilitation Gangs would have qualified for the incentive allowance, such incentive allowance will similarly be provided the C&S protection/support positions." The Carrier posits that accepting the Organization's position would lead to an absurd and unreasonable interpretation of Rule 22(d) – a result that should be avoided where there is an equally plausible, more sensible, interpretation, citing Second Division Award 1321 and Third Division Award 15011. It asserts that the Organization failed to meet its burden of proving a violation of the parties' Agreement, and contends that the claim should be denied.

A careful review of the record convinces the Board that the Organization failed to sustain its burden of proving a violation of Rule 22(d) under the facts of this case. The Board agrees that, under established rules of contract construction, clear and unambiguous contract language should be enforced as written; the contract is to be interpreted as a whole; all words used by the parties are to be given their plain meaning; and if the language is subject to differing interpretations, one leading to a reasonable and sensible result should be preferred over one leading to an absurd conclusion. See, e.g. Third Division Award 15011. Applying these principles to this case does not permit the Board to accept the Organization's interpretation of Rule 22(d).

Rule 22 is entitled "Starting Time Hours," a heading that defines its content. All subparagraphs deal with starting (or ending) times of employees. Rule 22(b) defines start times for one shift operations or the first shift of two or more to begin between 6:00 A.M. and 8:00 A.M. (or 5:00 A.M. and 8:00 A.M. for C&S Gangs from May 1 thru September 30). Rule 22(d) provides the basis for a possible exception to the agreed-upon starting times for specific types of gangs set forth in subparagraphs (1) thru (10). It does not require such exception, but permits it. The paragraph immediately below the tenth type of gang, also a provision falling within Rule 22(d), provides for an incentive of $0.65 for all employees working in or in connection with "any of the gangs designated in paragraph (d)."

The parties admit that this provision has not yet been subject to interpretation. To interpret it as the Organization urges would mean that each employee working in support of a gang listed in paragraph (d) would be entitled to a $0.65 incentive bonus irrespective of starting time and unrelated to it. If that were the case, why would the parties place this bonus in Rule 22, and especially under

paragraph (d), which sets forth the agreement of the parties to permit an exception to the 6:00 A.M. to 8:00 A.M. starting time? Why would it not be included under "Wages," indicating that any employee working in, or in connection with, these gangs is paid an additional $0.65/hour?

We find that its placement within Rule 22 is critical to an understanding of its intended purpose - to provide an incentive payment to all employees working in or in connection with designated gangs who have had their starting time altered under Rule 22(d) from those established under Rule 22(b). The Board concurs with the Carrier that it makes most sense to construe this provision in line with the Rule within which it falls and other subparagraphs of such Rule. In fact, paragraph (f) permits adjustment of the starting times of gangs other than those listed in paragraph (d) only if agreement is reached between the General Chairman and the Chief Engineer-C&S. There is no contention that the Chief Engineer-C&S notified the General Chairman, or any allegation of a failure to do so, prior to establishing the positions in question, another requirement set forth in Rule 22(d) for the establishment of positions with varying starting times thereunder. This fact supports the Carrier's contention that these positions were not established under Rule 22(d).

The Board agrees that, when interpreting the language of the paragraph of Rule 22(d) relied upon by the Organization herein, in relation to the heading of Rule 22 - Starting Time Hours - and the fact that it is clearly an exception to the negotiated Rule 22(b) starting time hours to provide the Carrier with additional flexibility, it would be an absurd result to say that the incentive payment included in paragraph (d) has nothing whatsoever to do with whether the starting time of the designated gang or the employee working in connection with it is other than that which is permitted in paragraph (b). To accept the Organization's argument that the incentive provision has nothing to do with starting times is to ignore the parties' inclusion of it in Rule 22.

The fact that two prior Advertisements for C&S Maintainers working as Tie Gang or TLS Support were posted with incentive pay and had starting times within the parameters of Rule 22(b) is insufficient to meet the Organization's burden of proof to show that there is an accepted past practice or agreed-upon interpretation of Rule 22(d) to support sustaining its claim, especially in light of the Carrier'

contention on the property that it had no knowledge of such postings, which were clearly a mistake, rather than an agreed-upon interpretation. The Carrier's examples of advertisements submitted supposedly to the contrary also do not clearly apply to similar types of positions or gangs. Additionally, the Carrier's reliance on the language of Rule 37 to support its position that the $0.65 incentive was intended to be tied to the starting times of the gangs or employees, was apparently argued for the first time to the Board, and not on the property, and, therefore, was not considered as a basis for our interpretation of Rule 22(d) herein.

Accordingly, the Board concludes that the Organization failed to meet its burden of proving that Rule 22(d) supports the payment of a $0.65 incentive bonus to the Claimants under the facts of this case. Accordingly, the claim must be denied.

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 November 2013.