

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43198
Docket No. MW-42510
18-3-NRAB-00003-140148**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman 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 Carrier violated the Agreement when beginning on November 1, 2012, and continuing, it failed to set forth the workdays and rest days of Gang 9115 in writing a minimum of five (5) workdays in advance of the beginning of the consecutive half work period and when it failed to post such written notice at convenient locations accessible to the gang members and copied to the appropriate General Chairman as required by Rule 28(c) and the March 6, 2012 Agreement (System File UP727BT12/1577812 MPR).
- (2) As a consequence of the violation referred to in Part (1) above, "*** the Carrier must compensate each Claimant fifty dollars (\$50) per day, each day, beginning 11/01/12 and continuing until the Carrier fully complies with Rule 28."

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.

This claim raises the issue of the Carrier's compliance with the prior notice requirement in Rule 28(c) to set forth in writing to employees (and copy the General Chairman) of the rest days and work days for Gang 9115 at least 5 days prior to their November 1, 2012 compressed work half.

In its claim and appeals, the Organization asserted that no written notice was posted or given to employees, and none sent to the General Chairman, of the compressed halves work and rest day schedule starting November 1, 2012. It included no statements from any of the 37 employees working in Gang 9115 at the time to verify such contention.

In its responses to the claim and appeals, the Carrier submitted a written statement from the Manager of Track Programs indicating that prior to Gang 9115 going from a compressed 1 to a compressed 1c schedule on November 1, the new schedule was posted in the job briefing trailer by the eye scan which is used daily by employees. It also included copies of an October 24, 2012 notice, as well as email correspondence about said notice, to prove that the General Chairman was properly notified of this schedule change. The Carrier contended that the Organization had failed to meet its burden of proving a violation of Rule 28, or offering any probative evidence of such, and asserted that the remedy sought was a penalty not rationally based, nor supported by the language of Rule 28(c).

A careful review of the record convinces the Board that the Organization has failed to meet its burden of proving a violation of the Agreement in this case. It has been consistently held that there must be concrete, affirmative proof to meet a party's burden, and that mere assertions are insufficient to meet that standard. See, e.g. Third Division Award 27895. In this case the Organization only submitted assertions that no notice was posted or sent to the General Chairman in its claim and appeals, and failed to rebut the Carrier's direct evidence from the Manager and then Assistant Labor Relations Director that such notice was timely posted and sent, as required by Rule 28(c). Therefore, the claim must be denied.

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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 30th day of May 2018.