

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 43379  
Docket No. MW-42435  
19-3-NRAB-00003-140038 (Old)  
19-3-NRAB-00003-180455 (New)

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

(Brotherhood of Maintenance of Way Employees Division—  
(IBT Rail Conference

**PARTIES TO DISPUTE:** (  
(Union 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 work schedule for the employees assigned to Gang 8957 without proper written notice and when the Carrier failed to properly compensate the Claimants for working on August 23, 2012 and for being withheld from working on August 31, 2012 in connection therewith (System File RC-1231U-451/1576989).
- (2) As a consequence of the violation referred to in Part (1) above, ‘... all members of Gang 8957 now be compensated twelve (12) hours of overtime for working on August 23, 2012 and twelve (12) hours of straight time for being sent home on August 31, 2012.’”

**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 issue presented to the Board is whether the Carrier provided proper notice regarding the Claimants' work and rest days. The Claimants were working a T-2 compressed half work schedule, and per Agreement rules, the Carrier was required to set forth employees' work and rest days at least five working days in advance.**

**The Organization argues that at the end of shift on August 14, 2012, Supervisor Nelson told the Claimants to report for duty on August 23, 2012, only one day in advance of their scheduled second half. By doing so, the Organization argues the Claimants were required to work on August 23, 2012, instead of observing that day as a scheduled rest day. The Organization also contends that the Claimants were withheld from service on August 31, 2012, instead of allowing them to work that day.**

**The Carrier argues that the Claimants were provided written notification on June 30, 2012 advising them that their work days would consist of the 8<sup>th</sup> – 15<sup>th</sup>, and the 23<sup>rd</sup> – 30<sup>th</sup> of each month, with holidays observed at the end of the cycle.**

**Both parties provided evidence in support of their positions. The Organization provided statements from some of the Claimants, attesting that there was no posting as claimed by the Carrier. The Carrier provided a written statement from Supervisor Nelson indicating the Claimants were informed in June 2012 of their work and rest days. The Carrier also provided the actual June 30, 2012 posting, detailing the scheduled work and rest days for the Gang.**

**Based on the evidence supplied by both parties, the Board is confronted with an irreconcilable dispute of fact. The Board is unable to measure the validity of the Claimants' statements versus the statement and posting provided by Supervisor Nelson. As an appellate body, the Board is simply unable to resolve the dispute of fact presented here. As such, the Board has no choice but to dismiss the claim.**

**Although the Board may not have repeated every item of documentary evidence or testimony, nor all the arguments presented, we have considered all the relevant evidence, testimony, and arguments presented in rendering this Award.**

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**AWARD**

**Claim dismissed.**

**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 18th day of January 2019.**