

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43381
Docket No. MW-42440
19-3-NRAB-00003-140047 (Old)
19-3-NRAB-00003-180457 (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 starting time of System Gang 9001 and support Gangs 9004, 9005, 9006, 9007, 9008 and 9910 on July 31, 2012 and failed to allow said starting time to remain in effect for five (5) consecutive days as required by Rule 31(g) (System File G-1231U-52/1578252).
- (2) As a consequence of the violation referred to in Part (1) above, the employes assigned to System Gang 9001 and support Gangs 9004, 9005, 9006, 9007, 9008 and 9910 shall “*** each be compensated for an additional two (2) hours at their respective straight time rates for each of the four days on August 8, 9 10, and 11, 2012, when they were not allowed to work from 11:00 A. M. to 1:00 P. M. when the start time should have remained at 11 A.M. and the difference of pay between their applicable straight time and overtime rates for each hour that they worked after 10:30 P.M. which would be their normal quit time as eleven (11) hour days were scheduled for the first half of August 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.

In July 2012, the Claimants were working an alternative work schedule known as a T-2 schedule, with a shift start time of 4:00 AM. On July 31, 2012, the Claimants' start time was changed to 11:00 AM. On the Claimants' next scheduled work day, August 8, 2012, the Claimants' start time was changed to 1:00 PM.

The Organization argues the Carrier failed to maintain the July 31, 2012 start time of 11:00 AM for at least five consecutive days per Rule 31(g).

The Carrier argues that Rule 31(h), rather than 31(g), is controlling because the start time change on August 8, 2012 of 1:00 PM falls outside the hours contemplated in Rule 31(g).

In pertinent part, Rules 31(g) and 31(h) state the following:

- “(g) The starting times for production crews* will be between 4:00 a.m. and 11:00 a.m. and will not be changed without thirty-six hours notice, except that forty-eight hours notice will be given for a change which is greater than four hours. Starting times will remain in effect for at least five consecutive days. The BMWWE may contest the creation of new starting times through the arbitration procedure set forth in Appendix 'A'. If the carrier wishes to start a crew so early that a convenient restaurant is not open, or end work so late that a meal cannot be obtained, it will be

the responsibility of the carrier to provide a meal to those employees at the work site or other place appropriate, convenient and safe to its employees.

- (h) Other starting times may be agreed upon by the parties for production crews* or for regular assignments involving service which is affected by environmental conditions or governmental requirements or for work that must be coordinated with other operations in order to avoid substantial loss of right of way access time; however, no production crews* or regular assignment will have a starting time between midnight and 4:00 a.m. If the parties fail to agree on such other starting times, the matter may be referred to arbitration in the manner described in Appendix 'A'. Similar notice requirements regarding starting times, as described in (g) above, will apply.”

The Carrier argues the Board lacks jurisdiction to decide the issue based upon the Organization’s failure to follow the process outlined in the Agreement for disputing a start time change and its failure to set forth the proper rule. The Board respectfully disagrees. The Organization is not challenging the actual change of start time. The Organization’s claim concerns the duration of the 11:00 AM start time established on July 31, 2012.

The dispute here involves a determination by the Board as to whether Rule 31(g) or Rule 31(h) is controlling given the facts as presented. The Organization argues that the Carrier violated the Agreement when it failed to have the July 31, 2012 start time of 11:00 AM remain in effect for a minimum of five (5) consecutive days as required by Rule 31(g).

Rule 31(g) applies to start times between 4:00 AM and 11:00 AM. The language in Rule 31(g) contains notice requirements when start times are changed, and a duration requirement of at least five days once the new start time is implemented.

Rule 31(h) applies to start times outside the 4:00 AM to 11:00 AM period and has similar notice requirements regarding start times as described in Rule 31(g), but is silent as to any duration requirements.

The start time at issue here is the 11:00 AM start time initiated on July 31, 2012. A start time of 11:00 AM applies to Rule 31(g). The language governing Rule 31(g) as it relates to duration is specific and mandatory, stating “Starting times will remain in effect for at least five consecutive days.” There was no agreement here to waive the duration requirement of five days. As such, the Board finds the Carrier violated the Agreement by not continuing the July 31, 2012 start time of 11:00 AM for an additional four days.

The Carrier argues that the Organization’s claim is excessive based upon the Carrier’s belief that many of the employees/gangs identified by the Organization were not involved in the grieved work. The Carrier also argues the employees impacted were all fully employed and worked all straight-time hours. Any remedy should be limited to overtime pay for the hours between 11:00 AM to 1:00 PM.

Based upon all the above, the parties are hereby ordered to jointly review Carrier records to identify the proper claimants. Thereafter, each Claimant is to be compensated an additional two (2) hours at their respective overtime rate for each of the four days on August 8, 9, 10, and 11, 2012.

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.

AWARD

Claim sustained in accordance with the Findings.

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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 18th day of January 2019.