

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43382  
Docket No. MW-42441  
19-3-NRAB-00003-140048 (Old)  
19-3-NRAB-00003-180458 (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 improperly changed the starting time of System Gang 9001 and support Gangs 9004, 9005, 9006, 9007, 9008 and 9910 on July 31, 2012 (System File G-1231U-51/1578246).**
- (2) As a consequence of the violation referred to in Part (1) above, the employees assigned to System Gang 9001 and support Gangs 9004, 9005, 9006, 9007, 9008 and 9910 on July 31, 2012 shall each be allowed “\*\*\* an additional seven (7) hours at their respective straight time rates on July 31, 2012, when they were not allowed to work from 4:00 A. M. and 11:00 A. M. and the difference of pay between their applicable straight time and overtime rates for each hour that they worked after 4:30 P.M. their normal quit time on July 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.

On July 31, 2012, the Claimants' start time was changed from 4:00 AM to 11:00 AM. The dispute here concerns whether proper notification occurred for the changed start time under Rule 31(g).

In pertinent part, Rule 31(g) states 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.”

Because the start time change was greater than four hours under Rule 31(g), the Carrier was required to provide forty-eight hours notice of the change.

The Carrier maintains they complied with the notice requirements of Rule 31(g) by giving notice on the morning of July 24, 2012 for the start time change implemented on July 31, 2012. The Carrier argues providing a week's notice to the Claimants thereby satisfied the notice requirements of Rule 31(g). The Carrier supplied statements from Supervisors Gunderson and Levis to support its position. Both supervisors claim Supervisor Gunderson used a sound system at approximately

4:00 AM on the morning of July 24, 2012 to notify the Claimants of the change in start time for the upcoming July 31, 2012 shift.

The Organization maintains the Claimants were not notified of the changed start time for July 31, 2012 until the end of the work day on July 30, 2012. The Organization supplied a statement by the Claimants asserting that at “the end of the day on July 30, 2012 approximately 4:30 PM we were informed that we would be moving to Matson, IL and our starting time on July 31, 2012 would be at 11 AM. We are of the belief that a starting time change of greater than 4 hours requires 48 hours notice. We were only given 18 ½ hours notice for a start time change of 7 hours.”

Based upon 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 Claimant’s statement versus the statements provided by Supervisors Gunderson and Levis. 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.

**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.