

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43383
Docket No. MW-42465
19-3-NRAB-00003-140069 (Old)
19-3-NRAB-00003-180459 (New)**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division–
(IBT Rail Conference
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(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 August 8, 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-53/1579083).**
- (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 one and one half (1.5) hours at their respective straight time rates on August 10, 11 and 12, 2012, when they were not allowed to work from 1:00 P. M. to 2:30 P. M. and the difference of pay between their applicable straight time and overtime rates for each hour that they worked after their normal eleven (11) hour shift beginning at the proper start time of 1 P.M. ***”**

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 were informed their start time for the next assigned work day, August 8, 2012, would be changed from 11:00 AM to 1:00 PM. On August 8 and 9, 2012, the Claimants reported as directed at 1:00 PM, but were required to start their shift at 2:30 PM on August 10, 2012.

The Organization argues the Carrier violated the Agreement when it: A) failed to provide thirty-six hours notice of the start time change from 1 PM to 2:30 PM per Rule 31(g) of the Agreement, and B) failed to keep the August 8, 2012 start time in place for five continuous days per Rule 31(g) of the Agreement.

The Carrier argues that Rule 31(h), rather than Rule 31(g), is controlling because the start time change was made outside the start times 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.”

In summary, the Carrier makes the following arguments:

- “1. The Organization committed procedural errors by basing its case on Rule 31(g) versus 31(h), and by attempting to amend its claim with an untimely notice argument. If the Organization was not in agreement with the start time change, they must challenge the change via the process outlined in Appendix A per Rule 31(h).
2. The Carrier satisfied all notice requirements, as the supervisor gave advance notice of the changed start time for August 10, 2012 at the start of shift on August 8, 2012.
3. Unlike Rule 31(g), there is no requirement in Rule 31(h) whereby the Carrier is required to maintain start times for a specified number of days.
4. The Organization’s remedy is excessive and without factual support.
5. All Claimants were fully employed at the time of the incident and suffered no loss due to the start time change.”

In summary, the Organization makes the following arguments:

- “1. The Carrier violated rule 31(g) when it changed the 1 PM start time after only two days of work at that start time

2. The Carrier violated rule 31(g) when it failed to give 36 hours notice when the start time was changed from 1 PM to 2:30 PM. Notice was provided near the end of shift on August 9, 2012.
3. The Organization does not dispute a start time change under Appendix A.”

The Carrier maintains the Board lacks jurisdiction to rule upon the claim because the Organization failed to follow the process outlined in the Agreement for disputing a start time change. The Board respectfully disagrees. The Organization is not challenging the actual change of start time. The Organization’s claim concerns the duration of the start time after it was initiated and the notification requirements before the start time was changed.

The Carrier also argues the Organization made a procedural error by attempting to amend its claim by making an untimely notice argument. The Organization argues the Carrier failed to give the required thirty-six hours notice before changing the start time from 1:00 PM to 2:30 PM on August 10, 2012. The Organization argues notice was given at the end of shift on August 9, 2012, while the Carrier argues notice was provided at the beginning of shift on August 8, 2012. Both the Organization and the Carrier provided evidence supporting their respective positions, creating a dispute of fact. The Carrier argues the Organization attempted to amend its claim because the Organization’s initial filing only addressed the Carrier’s alleged failure to “keep the previous start time in affect for the five consecutive days as outlined in Rule 31 G.” A review of the record indicates the Organization’s initial claim was void of any argument regarding the required thirty-six hours notice, but was added as the appeal proceeded, thus amending the Claim as argued by the Carrier. As such, this portion of the claim is dismissed.

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 August 8, 2012 start time of 1 PM 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, has similar notice requirements regarding start times as described in Rule 31(g), but is silent as to any duration requirements.

The change in start time here was from 1:00 PM to 2:30 PM. Because these hours fall outside the 4:00 AM to 11:00 AM window contemplated in Rule 31(g), Rule 31(h) is applicable. As indicated above, Rule 31(h) is silent as to any duration requirements. The specific inclusion of duration requirements in Rule 31(g) and exclusion of the same in Rule 31(h) implies that duration requirements are not applicable to Rule 31(h). As such, the Carrier was not obligated to continue the 1 PM start time initiated on August 8, 2012 for a minimum of five consecutive days.

Based on the findings above, the claim must therefore be denied.

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 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 18th day of January 2019.