

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44066  
Docket No. MW-43399  
20-3-NRAB-00003-190580**

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

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

**PARTIES TO DISPUTE: (**

**(Union Pacific Railroad Company (Former Missouri Pacific)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it changed the starting time of Gang 9112 on December 12, 2014 without providing Claimant Q. Bratchett thirty-six (36) hours’ advance notification of the starting time change and when it instructed the Claimant not to work on December 12, 2014 (System File UP503JF15/1620530 MPR).**
- (2) The Carrier violated the Agreement when it changed the starting time of Gang 9112 on December 12, 2014 without providing Claimant J. Ellis thirty-six (36) hours’ advance notification of the starting time change and when it instructed the Claimant not to work on December 12, 2014 (System File UP502JF15/1620529).**
- (3) As a result of the Carrier’s violation referred to in Part (1) above, Claimant Q. Bratchett shall now be compensated for eleven (11) hours at his respective straight time rate of pay and for one (1) day’s per diem allowance.**
- (4) As a result of the Carrier’s violation referred to in Part (2) above, Claimant J. Ellis shall now be compensated for eleven (11) hours at his respective straight time rate of pay and for one (1) day’s per diem allowance.”**

**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.

At the time of incident, the Claimants were working a T-2 schedule on System Rail Gang 9112, with regular work hours of 10:30 AM to 9:30 PM (an eleven-hour shift). In the instant claim, the Organization alleges the Carrier changed the Gang's start time for December 12, 2014 without a thirty-six-hour notice as required by Rule 32. The Carrier maintains that the matter was not a Rule 32 change in start time but was rather mandatory, scheduled overtime whereby employees of the Gang were required to come in early (at 8:00 AM) preceding their normal shift for December 12, 2014. There is no dispute that the Claimants reported for work on December 12, 2014, thirty minutes prior to their normal start time of 10:30 AM. However, because the Claimants failed to report for the 8:00 AM scheduled overtime, they were sent home and reported as absent-unexcused.

In summary, the Organization alleges a) the Carrier violated Rule 32 of the Agreement when it failed to provide thirty-six hours advance notice of a starting time change to the Claimants, and b) the Carrier's defenses are without merit.

In summary, the Carrier alleges a) there was no Rule 32 change in start time as alleged by the Organization, b) the entire Gang was required to come in early for overtime at 8:00 AM preceding their normal shift start on December 12, 2014, c) while the Claimants allege that no notice was given regarding the overtime work, the remaining employees assigned to the Gang properly reported for the mandatory and scheduled overtime, d) the Organization failed to meet its burden, and e) the remedy sought is improper and excessive.

As stated above, there is no disagreement that the Claimants reported for work around 10:00 AM on December 12, 2014, prior to their normal start time of 10:30 AM. There is also no dispute that the Carrier sent the Claimants home, reporting them as absent-unexcused, because they failed to report for the scheduled overtime. What is in dispute is whether the Claimants were aware of, and properly notified that they had to report at 8:00 AM on December 12, 2014 for the scheduled overtime.

The Carrier provided two supervisor statements and payroll records to support its contention that all employees, including the Claimants, were given proper notice to report for the scheduled overtime at 8:00 AM on December 12, 2014. The supervisor statement also indicated that all employees, except the Claimants, reported as required.

Here, the planned overtime consisted of 2.5 hours – the hours from 8:00 AM to 10:30 AM. As a result, one would expect a minimum of 2.5 hours overtime to be provided to all employees who worked the overtime. However, supervisor statements failed to reconcile with the payroll records. Payroll records were provided for 31 employees on both December 11 and 12, 2014. One employee was on bereavement and another on vacation for the two reported days. Of the 29 employees available to work, payroll records for December 11, 2014 indicate only two employees received 2.5 or more hours of overtime. Payroll records for December 12, 2014 indicate only one employee received 2.5 or more hours of overtime. One employee received 11 hours of regular pay with no overtime on both December 11 and 12, 2014. Supervisor statements indicated that the entire gang should have received, at a minimum, 2.5 hours of overtime, yet the vast majority of employees received less than 2.5 hours overtime. Given the above, the Board finds the supervisory statements failed to reconcile with the payroll records and the supervisor failed to effectively communicate the established start time for the scheduled overtime.

Having determined that the supervisor failed to effectively communicate the established start time for the overtime, the Board turns to the remedy requested. Here, through no fault of their own, the Claimants were sent home and not allowed to work their scheduled shift on December 12, 2014. As a result, the Claimants are to be compensated for 11 hours at their straight time rate. The Carrier argues that the Organization's request for per diem should be denied because the Claimants failed to perform compensated service. The board respectfully disagrees. Again, the Claimants reported and were available for their regular assigned shift on December 12, 2014 and were sent home through no fault of their own. Unlike the recent awards cited by the

Carrier at hearing (Third Division Awards 43541 and 43543), the Claimants here actually incurred expenses. Based upon all the above, the claim is sustained.

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

**AWARD**

Claim sustained.

**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 11<sup>th</sup> day of August 2020.