

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45059
Docket No. SG-45837
24-3-NRAB-00003-230321**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the CSX Transportation (formerly Louisville & Nashville):

Claim on behalf of L. R. Boren, C. T. Brasher, R. M. Shocklee, J. W. Steinfeld and C. M. Whitsell, for time and one half hours at the overtime rate of pay for Claimants Brasher and Whitsell; two and one half hours at the overtime rate of pay for Claimants Boren, Shocklee, and Stienfeld, account Carrier violated the current Signalmen’s Agreement, particularly Rule 8, when, on July 2, 2018, the Claimants were called to work outside their normal working hours and not compensated for the three hour minimum payment. Carrier's File No. 18-61842. General Chairman's File No. 18-71-05. BRS File Case No. 16106-L&N. NMB Code No. 139.”

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.

When this dispute arose, Claimants were assigned to Signal Maintainer positions on the Henderson Subdivision, District 7, with regular hours of 7:30 AM to 3:30 PM, Monday through Friday, also with Saturday and Sunday as rest days.

On Friday, June 29, 2018 at 3:47 PM – after their tours were over – a Carrier Manager notified Claimants by text message advising that they should meet her at Casky Yard at 7:00 AM on Monday July 2, 2018, which was 30 minutes before the start time of Claimants' normal tour. The purpose of the July 2, 2018 7:00 AM start was for a safety briefing.

Claimants attended the July 2, 2018 meeting commencing at 7:00 AM and were compensated 30 minutes overtime.

The Organization asserts that Claimants should have been paid the minimum three hours overtime rate for performing work outside their regular tour of duty under Rule 8 (Overtime Call Rule). The Carrier contends that Claimants were properly compensated for 30 minutes overtime for the safety meeting at 7:00 AM as the 7:00 AM start constituted a change of starting time under Rule 12 (Starting Time).

Rule 8 of Agreement No. 15-018-16 relied upon by the Organization provides:

**“Uniform Rule 8
Overtime Call Rule**

- a) Employees notified prior to release from duty to report at a designated time to perform service outside of and not continuous with regular tour of duty shall be paid at the applicable overtime rate from the time required to report to the time released with a minimum of three (3) hours at the time and one-half rate.
- b) Employees called after release from duty to perform service outside of regular tour of duty shall be paid at the applicable overtime rate with a minimum of three (3) hours at the time and one-half rate. Time of employees called will begin at the time called and will end upon return to the point at which called (residence or motel).”

Rule 12 of the Signal Department Agreement relied upon by the Carrier provides:

“RULE 12. STARTING TIME.

The starting time of the work period of all employees, where one shift is worked or the first shift where two or three shifts are employed shall be established between the hours of 6:00 a.m. and 8:00 a.m., consistent with the requirements of the service. The starting time of employees shall not be changed without first giving the employees affected forty-eight hours notice. Starting time shall not be temporarily changed for the purpose of avoiding overtime.”

The Organization has carried its burden to show that Rule 8(b) (Overtime Call Rule) applies and that for the one-time safety meeting which occurred prior to Claimants’ start time on July 2, 2018, Claimants were entitled to the minimum overtime required by that rule.

Rule 8(b) is clear and specific – “Employees called after release from duty to perform service outside of regular tour of duty shall be paid at the applicable overtime rate with a minimum of three (3) hours at the time and one-half rate.” Claimants’ regular tour of duty was from 7:30 AM to 3:30 PM, Monday through Friday. After their release from duty at 3:30 PM on Friday June 29, 2018, Claimants were advised at 3:47 PM that date that they were to report on their next scheduled work day on July 2, 2018 at 7:00 AM rather than at 7:30 AM. That scenario fits squarely within the clear language of Rule 8(b) quoted above, – i.e., a call to Claimants after release from duty to perform service outside of their regular tour of duty.

Rule 12 relied upon by the Carrier is not applicable to the facts in this case for several reasons.

First, as the Carrier argues, the Carrier did give Claimants 48 hours’ notice to Claimants that they were to report at 7:00 AM rather than 7:30 AM on their next work day. However, Rule 12 prohibits the Carrier from making temporary changes of starting times to avoid overtime. The changed starting time from 7:30 AM to 7:00 AM on July 2, 2018 was a “temporary change” – one day – in order for the Carrier to conduct a 30-minute safety meeting. The avoidance of having to pay the minimum three-hour overtime payment under Rule 8(b) is clear. Had the Carrier applied Rule 8(b) as opposed to attempting to use Rule 12, the 30-minute overtime payment made

by the Carrier would have been improper for this one-time event. This was an overtime call and not a change of starting time as contemplated by the rules.

Second, the rules of contract construction require application of the overtime call provisions of Rule 8(b) as opposed to the change of starting time provisions of Rule 12. For purposes of this discussion, we shall assume that reading Rules 8 and 12 together yield conflicting results and therefore create an ambiguity in the parties' contract language.

"Fundamental rules of contract construction require that where contract language is ambiguous ... different provisions must be read together and construed to have meaning so as not to negate negotiated words." First Division Award 26299. See also, Third Division Award 35457 ("... contracts should be read as a whole and that constructions of one clause which render language in other clauses meaningless should be avoided.").

To read Rule 12 to allow the change of start time provisions to govern the one-time event would render the minimum overtime requirement for overtime calls made after tours of duty are completed in Rule 8(b) meaningless. Taken to its logical extent, under the Carrier's interpretation it could require employees to start early on sporadic days where there is a 48-hour hiatus between the employees' previous and next tours of duty and avoid the requirements for a three-hour minimum overtime payment under Rule 8(b) just by calling the different start time a "change of start time". A construction that gives the language in both rules meaning is that where a one-time event such as the safety meeting involved in this matter occurs, requiring employees to report early as the Carrier did in this case must be compensated as an overtime call as required by Rule 8(b) and not be considered a change of start time under Rule 12. Where the Carrier has a legitimate need to change start times for something other than a one-time call out, then Rule 12 applies. That construction gives meaning to both Rules 8(b) and 12.

And that is where PLB 7584, Award No. 12 relied upon by the Carrier comes into play. In that case, from April 1, 2013 to April 19, 2013, the Carrier changed the start times of its Signal employees from 7:00 AM to 6:00 AM to attend Track Department briefings due to a Track Project. The Board in that case found the Carrier changed the Signal employees' start times to match that of the track crews who were going out to work the same territory and the Signal crews were needed to support the track crews. No avoidance of overtime was found and that Board applied

Rule 12. That is not this case. This case presents a one-time call out for a safety meeting held prior to the employees' normal start time and not an ongoing event where the employees were needed to support other Carrier forces. Calling the requirement that Claimants report early a change of start time rather than an overtime call out does not, by itself, make Rule 12 applicable as opposed to the clear and specific language found in Rule 8(b).

As a remedy, the three-hour minimum required by Rule 8(b) shall be applied. The Organization identified Claimants Brasher and Whitsell be paid for one and one-half hours, and Claimants Shocklee, Boren, and Steinfeld be paid for two and one-half hours at their respective overtime rates of pay. That shall be the remedy.

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 31st day of October 2023.

**CARRIER MEMBER'S
DISSENTING IN OPINION
to
THIRD DIVISION
AWARD 45059, DOCKET No. SG-45837**

(Referee Edwin H. Benn)

The Carrier respectfully dissents to the Board's decision. On July 2, 2018, the Carrier changed Claimants' start times from their bulletined start time of 07:00, to 06:30 hours. On Friday, June 29, 2018, the Carrier notified Claimants of the start time change and the reason was to attend a safety briefing. Despite these undisputed facts, the Board sustained the claim and held the Carrier changed Claimants' start times strictly to avoid paying them overtime because the change was for one day. On the other hand the Board agreed the Carrier had the right to change employee's start times under L&N Agreement Rule 12, for projects that occurred for longer than a day if it had a legitimate business purpose for the change and gave sufficient notice. The Carrier dissents to the Board's decision because the Board effectively rewrote the party's clear agreement language and ignored prior precedent on the property for the issue. See PLB 7584, Award 12 (BRS v. CSX).

Rule 12, Starting Time of the L&N Agreement states:

The starting time of the work period of all employes, where one shift is worked or the first shift where two or three shifts are employed shall be established between the hours of 6:00 a.m. and 8:00 a.m., consistent with the requirements of the service. The starting time of employes shall not be changed without first giving the employes affected forty-eight hours notice. Starting time shall not be temporarily changed for the purpose of avoiding overtime.

The plain language of the L&N Agreement Rule 12 above, gives the Carrier the right to alter an employee's start time on the L&N property for any day, as long as the Carrier gives at least 48 hours' notice to an employee, the start time is changed between 06:00 and 08:00 and the

change was not done to avoid paying overtime. Also, prior precedent has upheld this interpretation of the clear contract language of the rule. See PLB 7584, Award 12 (BRS v. CSX).

Here, the facts are not in dispute the Carrier notified Claimants more than 48 hours in advance, their start time would be changed from 07:00 to 06:30 so that they could attend a safety briefing which undisputedly occurred. Under the clear language of the rule, as well the precedent interpreting same, the Carrier was within its rights to alter Claimants start times because: 1) the Carrier notified Claimants at least 48 hours in advance; 2) Claimants' start times were altered between 06:00 and 08:00 hours; 3) and the change was done for a legitimate purpose, here a safety briefing. Those facts are indistinguishable from prior precedent. See PLB 7584, Award 12 (BRS v. CSX).

Despite the foregoing, the Board sustained the claim and drew a distinction in the rule that does not exist and did not follow prior precedent. Here, the Board agreed the Carrier can change employees start times under the rule when the change is for multiple days as it stated, "Where the Carrier has a legitimate need to change start times for something other than a one-time call out, then Rule 12 applies." However, the Board held the Carrier cannot change an employee's start time in this claim because the change took place for a single day.

The plain language clearly gives the Carrier the right to alter employees start time for a single day or multiple days as long as it was done for a legitimate business purpose as long as: the employees were notified of the change 48 hours in advance; and the start time takes place between 06:00 and 08:00. Instead, the Board created a limitation in the rule that if the change cannot occur for a single day. No limitation exists in L&N Agreement Rule 12 or Uniform Rule 8, to create this distinction. Clearly the Board has no authority to create language in the rule itself and must interpret the rule as it currently exists. See NRAB Third Division, Award 28595 (Goldstein)

(Dismissing claim and holding, “It is not within the power of the Board to rewrite Agreement Rules but merely to interpret them as they exist.”); NRAB Third Division, Award 20196 (Blackwell) (sustaining claim and holding failure to apply clear contract language that created an exception would effectively rewrite agreement which the Board had no authority to do); NRAB Third Division, Award 22780 (Roukis); see also PLB 7876, Awards 4-8 (Fagnani) (denying claim and holding, “There is nothing in Rule 8, either stated or implied, which would provide reimbursement for mileage[.]”).

The clear contract language under L&N Agreement Rule 12 allows the Carrier to change a start time when: 1) the Carrier gives sufficient notice of a start time change; 2) the start time would change occur between 06:00 and 08:00 hours; and 3) the change was not done to avoid paying overtime. Here, there was no dispute Claimants start times were changed to attend a safety briefing. Further the facts of this claim make it indistinguishable with prior precedent on the property. See PLB 7584, Award 12 (BRS v. CSX). The Carrier undisputedly complied with the rule and the Organization did not prove the Carrier made the change to Claimants’ start time to avoid paying them overtime.

For these reasons, the Carrier emphatically dissents.

Regards,

A handwritten signature in blue ink, appearing to read 'John Nilon', with a stylized flourish at the end.

John Nilon
Sr. Manager, Labor Relations