

PUBLIC LAW BOARD NO. 2960

**PARTIES** Brotherhood of Maintenance of Way Employees  
**TO** and  
**DISPUTE** Chicago and North Western Transportation 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 and meal period of Surfacing Gangs 701 and 734 from 7:30 A.M. on June 13 through June 29, 1990 (Organization File 4PG-3358T; Carrier File 81-90-119).
- "2. As a consequence of the violation referred to in Part 1 above, the Claimants (listed in the attached to Employees' Exhibit B-3) ' . . . must be compensated for 1.5 hours at their applicable straight time rates of pay for the hours of 7:30 AM to 9:00 AM on each date of claim. Claimants must be compensated the differential between the straight time rate received and time and one-half rate entitled to for the 1.5 hours worked between 4:00 PM and 5:30 PM on each date of claim. Additionally, Claimants must be compensated 20 minutes at time and one-half rate per day for a meal period plus the \$7.00 evening meal allowance for each date worked continued two hours or more beyond the normal quitting time of 4:00 PM for all dates worked June 13 through June 29, 1990, inclusive."

**FINDINGS:** This Board, upon the whole record and all of the evidence, finds that the Employees and Carrier involved in this dispute are respectively Employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

**OPINION OF THE BOARD:** While there are some minor differences in facts, the two cases before the Board involve the same issue. For example, the Carrier changed the starting time of one of the Gangs in question from 7:30 a.m. to 10 a.m.. Thus, instead of working a shift from 7:30 a.m. to 4 p.m., they worked 10 a.m. to 6:30 p.m. There is no dispute that the Carrier gave notice of the change or that they sought the concurrence of the

General Chairman. The Parties could not agree, and as provided for in the rule, the Carrier implemented the change subject to the Organization's right to file a grievance.

The applicable rule reads as follows:

"Rule 24 - STARTING TIME

"The starting time of the work period for regularly assigned service will not be earlier than 6:00 A.M. nor later than 8:00 A.M., except the starting time may be otherwise arranged by Agreement between representatives of the Organization and the Management based on actual service requirements. The starting time will not be changed for the purpose of taking care of temporary conditions of twelve (12) days or less, nor will it be changed without first giving employees affected thirty-six (36) hours' notice of such change.

- "(a) Where a single shift is employed, the starting time of such shift shall not be earlier than 6:00 A.M. and not later than 8:00 A.M.
- "(b) Where two shifts are employed, the starting time of the first shift shall be governed by paragraph (a) of this Rule, and the second shift shall not start later than 8:00 P.M.

NOTE: The provisions of paragraphs (a) and (b) of this Rule may be waived by agreement between the Assistant Division Manager-Engineering and the General Chairman.

- "(c) Where three shifts are employed in continuous service, the starting time of the first shift shall be governed by paragraph (a) of this Rule. The spread of each shift shall be eight consecutive hours, including an allowance of twenty minutes for lunch.
- "(d) If an operational problem arises which the Company contends cannot be met under provisions of paragraphs (a) and (b) hereof, and the employees contend to the contrary, and if the parties fail to agree thereon, then if the Company nevertheless puts such

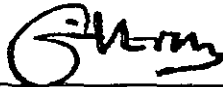
assignments into effect, the dispute may be processed as a grievance of claim."

This case turns on whether the Carrier has demonstrated that an operational problem existed which justified the change in starting time. It is the opinion of the Board that the Carrier's case in this regard is long on rhetoric and short on proof. For instance, they contended they had time sensitive trains with built-in penalties for failing to meet the schedule, yet there is no documentation of this fact. Similarly there is no documentation that the train had to or did in fact run through the areas in question between 7:30 a.m. and 10 a.m.

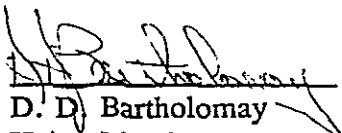
The remaining question is one of remedy. The Board believes the proper remedy is to direct the Carrier to compensate the Claimants at the overtime rate for all hours worked after the normal quitting time. The Claimants were already paid straight time, so they are entitled to the difference between straight time and overtime.

#### AWARD

The claim is sustained to the extent indicated above.



Gil Vernon, Chairman and  
Neutral Member



D. D. Bartholomay  
Union Member



J. M. Harvieux  
Carrier Member

Dated: October 31 1994.