

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 53

Carrier File No. 6MWA 91-01-07

Organization File No. C-91-HO60-1

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it improperly changed the starting time of Undercutter Gang 720 from 7:30 A.M. to 10:00 A.M. beginning August 13, through 31, 1990.

2. As a consequence of the above-stated violation, each member of Undercutter Gang 720 shall be compensated "two (2) hours of overtime each at their respective rates of pay for each day worked on this Gang".

FINDINGS

Rule 27 restricts the Carrier in the starting time of "one shift service" as follows:

**RULE 27. STARTING TIME**

A. When one shift service is employed, the starting time will not be earlier than 6:00 A.M., and not later than 8:00 A.M., except as hereinafter provided, and will not be changed with first giving employes affected thirty-six (36) hours' notice.

NOTE: A starting time for tie, sled, rail or surfacing gangs, including crews or employes working with such gangs, may not be earlier than 5:00 A.M. and not later than 10:00 A.M. during the months of April through October. . . .

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Fort Worth, Texas

EMPLOYEE RELATIONS

The Claimants herein were assigned to Undercutter Gang 720, which was the bulletined designation of the work group. The Undercutter Gang's initially assigned hours were from 7:30 a.m. to 3:30 p.m. For the period from August 13 through August 31, 1990, the Carrier assigned the Claimants to a 10 A.M. through 6:00 P.M. schedule. Since Undercutter Gang is not listed in the specific exceptions to Rule 27A, the Organization argues that the changed hours were in violation of the Rule.

The Carrier responds that "the function of the large Plasser undercutter and a track sled are analogous . . . and therefore an undercutter gang falls into the category of sled gang as shown in the note to Rule 27A". The Carrier also contends that the Organization recognized this similarity in the position it took in a previous dispute (Public Law Board 4402, Award 20).

A review of PLB 4402 Award 20, based on excerpts provided by the Carrier, indicates that therein the Organization supported the view that Carrier forces performed undercutting and related activities, including use of sleds, and thus opposed the contracting of such work.

The Organization states without contradiction as follows:

An important point to be made here is that the Note to Rule 27(A) did not exist prior to the signing of the current collective bargaining agreement. Although undercutter gangs and sled gangs existed prior to the effective date of the current Agreement and such equipment was listed as Carrier equipment in Rule 5, the parties did not list undercutter gangs in the Note to Rule 27(A).

There may well be reason to conclude that Undercutter Gangs should be included in the list of exceptions in the Note to Rule 27A. The fact is, however, that Undercutter Gangs are not so included, and there is no indication that the Organization has specifically conceded, by practice or agreement, that they should be so considered. The Board must read the provision as currently written and finds that a violation occurred. Under the particular circumstances, the remedy sought by the Organization is appropriate.

A W A R D

Claim sustained. The Carrier is directed to make this Award effective within 30 days of the date of this Award.

  
 HERBERT L. MARX, Jr, Chairman and Neutral Member

  
 MARK J. SCHAPPAUGH, Employee Member

  
 D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: July 10, 1995