BEFORE PUBLIC LAW BOARD NO. 6043

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
IBT RAIL CONFERENCE
and
ILLINOIS CENTRAL RAILROAD COMPANY

Case No. 92

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it changed the starting time for Surfacing Gang employe J. Anderson from 8:00 A.M. to 10:30 A.M. on March 24, 25, 26 and 29, 2010 (System File A100505/IC-BMWED-2010-00020).

2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant J. Anderson shall now be '. . . reimbursed a total of 2.5 hours overtime for each day of the violations which amounts to $370.50.'"

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant, alleging that the Carrier had violated the parties' Agreement when it changed the Claimant's starting time from 8:00 a.m. to 10:30 a.m. on March 24, 25, 26, and 29, 2010. The Carrier denied the claim.

The Organization contends that the instant claim should be sustained in its entirety because the Carrier's actions were improper and in direct violation of the parties' Agreement, because the Carrier failed to present any viable defense of its improper actions, and because the Claimant is entitled to the remedy requested. The Carrier contends that the instant claim should be denied in its entirety because the Organization failed to meet its burden of proof, and because there was no violation of the Agreement in this matter.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the record in this case, and we find that the Organization has shown sufficient evidence that the Carrier violated the Agreement when it changed the starting time for the Claimant working on the surfacing gang without giving the required thirty-six hours' notice in advance of the change in the start time. Therefore, the claim must be sustained in part.

The Organization relies on the language of Rule 22(a), which states the following:

> Starting time of work period for regular assigned day service will not begin earlier than 5:00 a.m. and not later than 8:00 a.m., except by agreement between the engineering superintendent and local chairman, and will be fixed by the supervisory officer and will not be changed without giving employees affected thirty-six hours' advance notice.

Consequently, the Carrier does have a right to change the start time to 10:30 a.m., but must give the affected employees thirty-six hours' advance notice. Although the Carrier states in its response to the claim that the notice was provided by "Supervisor Burl Sullens," there is no evidence that the Claimant received such notice thirty-six hours in advance of his starting time on March 24, 2010. However, the Claimant apparently showed up for work on March 24, 2010, and worked until March 29, 2010, with the new start time. Clearly, on the last days of that period, the Claimant had thirty-six hours' notice. However, there is no showing by the Carrier that the Claimant actually had thirty-six hours of notice for the change in start time for March 24 and March 25, 2010.

Consequently, this Board orders that the Claimant is entitled to be reimbursed two and one-half hours of overtime for March 24 and March 25, 2010, because the Carrier

failed to give the Claimant the required thirty-six hours' notice of the change in start time. The balance of the remedy sought by the Organization is denied.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be awarded two and one-half hours of overtime for March 24 and March 25, 2010, because the Carrier failed to give the Claimant the thirty-six hours' notice required by the Agreement.

PETER R. MEYERS
Neutral Member

CARRIER MEMBER

DATED: 7/31/13

ORGANIZATION MEMBER

DATED: 7/31/13

LABOR MEMBER'S CONCURRENCE AND DISSENT
TO
AWARDS 92 AND 93 OF PUBLIC LAW BOARD NO. 6043
(Referee Meyers)

In Awards 92 and 93, the Majority found that the Organization provided sufficient evidence to show that the Carrier violated the Agreement when it changed the starting time for the Claimant working on a surfacing gang without giving the required thirty-six (36) hours' notice in advance of the change in start time. While we agree with the Majority's decision that the Carrier violated Rule 22(a) when it changed the Claimants' start time without giving thirty-six (36) hours' advance notice, the Majority erred in finding that the Carrier had the unfettered right to change the Claimants' start time to 10:30 A.M.

In this regard, Rule 22(a) of the Agreement plainly provides that the "Starting time of work period for regular assigned day service **will not begin** earlier than 5:00 a.m. and **not later than** 8:00 a.m., except by agreement between the engineering superintendent and local chairman...." A review of the on-property handling of this dispute clearly establishes that the Claimants' starting time was changed to 10:30 A.M. without agreement between the engineering superintendent and the local chairman involved. Further, a review of the clear and unambiguous language of Rule 22(a), cited above, unmistakably reveals that starting time of work period for regularly assigned day service **will not begin later than 8:00 A.M.** Inasmuch as there is no dispute that the Carrier arbitrarily determined to change the Claimants' starting time to a time later than 8:00 A.M., there can be no question that the Carrier violated the plain language of Rule 22(a) of the Agreement. In finding that the Carrier had the right to change the Claimants' start time to a time later than 8:00 A.M., (i.e., 10:30 A.M.), the Majority exceeded its jurisdiction and essentially re-wrote the language of Rule 22(a) of the Agreement.

Inasmuch as the Majority's decision in this respect is contrary to the clear and unambiguous language of the Agreement, the awards are palpably erroneous and have no precedential value whatsoever.

Respectfully submitted,

Ryan Hidalgo
Employe Member