

PUBLIC LAW BOARD NO. 3460

Award No. 70
Case No. 70

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railroad Co.

STATEMENT
OF CLAIM:

- "1. The Carrier violated the Agreement when effective May 21, 1982 the working hours of Regional Steel Gang #3 changed from 6:00 A.M. until 2:30 P.M. to 10:00 A.M. until 6:30 P.M. without providing thirty-six (36) hours prior notice.
2. As a consequence of the aforesaid violation, Messrs. M. Alfred, S. C. Huff, M. J. Taylor, L. R. Marsh, P. Darrow, B. Kautt, M. C. Okler, G. L. Hayes, M. D. Paul, S. R. Olson, R. C. Mize, G. R. Woods, D. Wett, R. Breazeale, G. L. Miller, D. E. Young, D. E. Vasques, G. Gallo, R. L. Peterson, B. Vandenberg, G. D. Eckhart, D. J. Hanks, K. G. Herbert, D. R. Cassidy, R. T. Turnrose, E. J. Sundberg, N. D. Barber, K. C. Moors, D. L. Dobbins, G. E. Williams, J. E. Delzer, T. C. Cunningham and E. O'Regan shall each be allowed four (4) hours' pay at their respective time and one-half rate of pay."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Rule 27A of the Agreement provides as follows:

"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 without first giving employees affected thirty-six (36) hours' notice."

Claimants herein assigned to a Regional Steel Gang headquartered in camp cars at Whitefish, Montana regularly were assigned to work from 6:00 A.M. until 2:30 P.M., including one-half hour lunch period. According to Petitioner, during the regular work shift on May 20, 1982, they were notified that the work period would be changed effective the following day, May 21, to 10:00 A.M. until 6:30 P.M., instead of the regular hours. This was attested to by a statement signed by 13 members of the Gang.

Carrier alleges that the Assistant Roadmaster and the Foreman assembled the Gang Members on May 18, 1982 and informed them verbally that the starting time would be changed on May 20 to 10:00 A.M.

Neither party questioned the necessity for there being 36 hours' notice as required by the Agreement. The entire matter is a question of facts with respect to the resolution of this dispute.

The record is devoid of any evidence whatever to support Carrier's assertion of the particulars of when and by whom notice was given to employees in the Gang on the date alleged by Carrier. There is

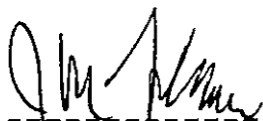
no evidence whatever from the active participants in the notification process. On the other hand, the Organization has a signed statement by a substantial number of employees of the Gang that they did not receive the requisite notice. As the Board views it, Carrier has failed to support its assertions with any probative evidence. In view of this lack of evidence in support of its factual assertions, the claim must be sustained.

AWARD

Claim sustained.

ORDER

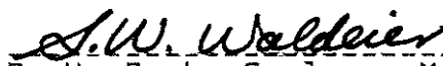
The Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member



F. H. Funk, Employee Member

9/20/88

St. Paul, Minnesota
August , 1988