BEFORE PUBLIC LAW BOARD NO. 6043

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

Case No. 93

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 employes J. Manzke, J. Geier, A. Swanstrom, P. Branson, and T. Hanks from 8:00 A.M. to 10:30 A.M. on March 16, 17, 18, 19, 22, 23, 24, 25, 26 29, , 30, 21, and April 1, 5, 6, 7, 8, 9, 12, 13 and 14, 2010 (System File A100512/IC-BMWED-2010-00021).

2. As a consequence of the Carrier's violation referred to in Part 1 above, the Claimants shall now be '. . . reimbursed a total of 2.5 hours overtime for each day of the violations which amounts to $1948.59 for J. Manzke (Track Foreman) and 1938.95 for Claimants Geier, Swanstrom, Branson, and Hanks (Machine Operators).'"

FINDINGS:

The Organization filed the instant claim on behalf of the Claimants, alleging that the Carrier had violated the parties' Agreement when it changed the Claimants' starting time from 8:00 a.m. to 10:30 a.m. on several dates in March and April, 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's defenses are without merit, and because the Claimants are 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 Claimants 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 Claimants received such notice thirty-six hours in advance of their starting time on March 16, 2010. However, the Claimants apparently showed up for work on March 16, 2010, and worked until April 14, 2010, with the new start time. Clearly, on the last days of that period, the Claimants had thirty-six hours' notice. However, there is no showing by the Carrier that the Claimants actually had thirty-six hours of notice for the change in start time for March 16 and March 17, 2010.

Consequently, this Board orders that the Claimants are entitled to be reimbursed two and one-half hours of overtime for March 16 and March 17, 2010, because the Carrier failed to give the Claimants 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 Claimants shall be awarded two and one-half hours of overtime for March 16 and 17, 2010, because the Carrier failed to give the Claimants 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