

PUBLIC LAW BOARD NO. 7599

AWARD NO. 26
CASE NO. 26

PARTIES TO
THE DISPUTE: Brotherhood of Maintenance of Way Employees Division
IBT Rail Conference

vs.

Grand Trunk Western Railroad Company

ARBITRATOR: Gerald E. Wallin

DECISION: Claim denied

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- i. The Agreement was violated when the Carrier changed the starting time for Patrol Foremen J. Rodriguez, R. Cousins, W. Kaminski, G. Miner, S. Weston, J. McMahon, G. Luperena, F. Phillips and M. Venier from 7:00A.M. to 10 A.M. beginning on June 13, 2011 and continuing (Carrier's File GTW-BMWED-2011-00012).
- ii. The Agreement was violated when the Carrier changed the starting time for Patrol Foremen J. Rodriguez, R. Cousins, W. Kaminski, G. Miner, S. Weston, J. McMahon, G. Luperena, F. Phillips and M. Venier from 7:00 A.M. to 10 A.M. beginning on June 13, 2011 and continuing (Carrier's File GTW-BMWED-2011-00015).
- lii. As a consequence of the violation referred to in Part (1) above, Claimants J. Rodriguez, R. Cousins, W. Kaminski, G. Miner, S. Weston, J. McMahon, G. Luperena, F. Phillips and M. Venier shall now '... be paid three hours straight time each day for all days beginning on June 13, 2011 and continuing until such time as the Carrier restores the Claimants to their the (sic) normal work day assignments as prescribed in the collective bargaining agreement.'
- liii. As a consequence of the violation referred to in Part (2) above, Claimants J. Rodriguez, R. Cousins, W. Kaminski, G. Miner, S. Weston, J. McMahon, G. Luperena, F. Phillips and M. Venier shall now '... be paid three hours of overtime time each day for all days beginning on June 13, 2011 and continuing until such time as the Carrier restores the Claimants to their the (sic) normal work day assignments as prescribed in the collective bargaining agreement.'"

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

These two (2) consolidated claims were originally appealed to the Third Division where they remained until withdrawn for hearing before this Board. The record of handling on the property does not establish any jurisdictional problems that require intervention by us.

These two (2) claims involved in this dispute are premised on the same circumstances (same dates, same claimants, same facts) but claim different remedies. In one of the claims, the Organization contends the change in starting time deprived each Claimant of three (3) hours of work per day and seeks reimbursement of three (3) hours per day at straight time. The other claim contends that each Claimant had to work three (3) hours beyond his normal quitting time and is thus entitled to three (3) hours of overtime pay. Both claims were mailed in the same envelope with the same Certified Mail tracking number.

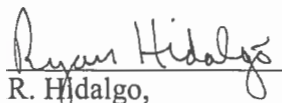
The record establishes that the nine (9) Claimants occupy single-person positions at eight (8) different locations, with the exception of Flint, Michigan where two (2) track Patrol Foremen are assigned. The record fails to establish that any of the Claimants worked less than eight (8) hours per day or more than eight (8) hours per day after the starting time change. Their single-person positions lend themselves to the "miscellaneous employees" exception language of Rule 12(d). This is especially so where *all* of the prior awards cited by the Organization in support of the claims involved multi-employee work gangs, such as extra gangs, tie gangs, track construction gangs, and section gangs.

After applying well-settled principles of analysis to the on-property records of these claims, we find both claims must be rejected. Both claim versions stand entirely on assertions and opinions that were refuted by the Carrier. No separate probative evidence was thereafter provided to break the deadlock. Under the circumstances, we are compelled to find that the Organization has not satisfied its burden of proof.

AWARD:

The Claim is denied.


Gerald E. Wallin, Chairman
and Neutral Member


R. Hidalgo,
Organization Member


C. K. Cortez,
Carrier Member

Date: 2-8-2018