

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22091
Docket Number MW-22047

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
((Southern Region)

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

(1) The Carrier violated the Agreement when, on October 24, 1975, it assigned the section gang to perform the work of Tie Force 1140 in lieu of the foreman and machine operators regularly assigned thereto (System File C-TC-248/MG-1509).

(2) Because of the aforesaid violation, Foreman L. W. Richardson and Machine Operators R. D. Evans, A. P. Dyer, D. A. Pollitt, R. D. Gum, D. E. McCleese and C. Borchers each be allowed eight (8) hours of pay at their respective time and one-half rates.

OPINION OF BOARD: These Claimants were assigned as Machine Operators on Carrier's Tie Force No. 1140; with normal work weeks consisting of five (5) eight-hour days (Monday through Friday) and rest days of Saturday and Sunday.

During the work week in question, pursuant to Rule 58, the members of Tie Force No. 1140 elected (with Carrier's concurrence) to work four (4) ten-hour work days, so as to enjoy a three-day weekend (Friday, Saturday and Sunday).

On the Friday in question (October 24, 1975), other section force Machine Operators utilized the idle machines to install ties on their assigned territory; which prompted this claim for the time "our machines were run."

We have noted that both parties have advanced charges and counter charges relative to "expanded claims" and "new evidence." But, in our view, it is not necessary to address those issues.

The record, as developed on the property, makes it clear that the Claimants exercised a voluntary option to work four (4) ten-hour days and thereby obtain three rest days during the work week in question. They were not required to be idle on Friday, October 24, 1975 - they elected to do so. Award 17791, is particularly pertinent here:

"...This Board has consistently followed the obviously sound rule that one who does a particular act voluntarily when he could decline to act without penalty has on (sic) claim to compensation under rules that provide for compensation to employees who are either 'required' or 'directed' or 'instructed' to perform the act."

We find no evidence of record to substantiate the allegation that the work performed by the section force machine operators was a continuation of the Claimants' tie force work. Mere assertions and argument - standing alone - do not satisfy the burden of proof required by the moving party in a dispute such as this.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.