

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22997
Docket Number **MW-22739**

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

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

(1) The Agreement was violated when Machine Operators T. Green, T. Veal, C. **Bussey**, C. Gilbert, D. Foraker, E. **Johnson**, L. Morrison, R. **Pauley**, T. I. Williams and Foremen **A. Fulton** and G. Morrison were not permitted to perform their full tours of duty on July 17, 18, 19 and 20, 1977 and were not permitted to leave their lodging headquarters, as a consequence of which they **each** suffered a loss of 22 hours of earnings (System File **11-E-708/L-126-1636**).

(2) Each of the **claimants** named in Part (1) above shall be allowed twenty-two (22) hours of pay at their respective straight-time rates."

OPINION OF BOARD: Claimants were scheduled to perform work on claim dates but they were precluded from doing so by the State Health Department, after **some** employees became violently ill and two died.

Claimants assert a violation of Rule 35 because established working hours were reduced below eight (8) without an agreement to that effect. Also they suggest that they **were "...actually** held on duty for eight and one-half hours on each of the claim dates."

Carrier compensated each Claimant in the amount of three (3) hours per day in asserted compliance with paragraph 2 of **Rule 35** which **mandates** that amount of payment when "...conditions prevent full day's work being **performed...**"

This **dispute** is certainly not clear cut and the factual circumstances suggest a number of considerations. But, the wording of Rule 35 seems to deny the existence of a valid claim. The second paragraph of that Rule clearly **recognizes** that "conditions" may prevent the alleged guarantees contained in the preceding portion of the Rule. **Here**, the Health Department (not **the** Carrier) imposed a rather precise condition which precluded the performance of full day's work.

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 Employee 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. Paulson
Executive Secretary

Dated at Chicago, Illinois, **this** 29th day of September 1980.