NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23103
Docket Number MW-22887

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The Carrier violated the Agreement when it used Assistant Roadmaster Gary Schuler to clean snow from switches from 4:15 A.M. to 1:45P.M. On November 23,1977 (System File C#17/D-2119).

(2) Because of the aforesaid violation, Section Laborer Gregory Kurtz be allowed three hours and forty-five minutes of pay at his time and one-half rate aod five hours and forty-five minutes of pay at his straight tine rate."

OPINION OF BOARD: On the claim date, the Claimant was instructed to clean snow from the switches. Although the Carrier customarily assigns a section laborer to travel with the snow plow to remove snow from switches deposited by the plow,in this instance, the Carrier utilized the service of an Assistant Roadmaster for that task. The Claimant asserts that he was available and qualified to have performed that work, had he bee:: afforded the opportunity to do so.

The correspondence exchanged on the property indicates that the Claimant worked from 1:00 A.M. to 8:00A.M. on the claim date, and that he elected to leave the property at 8:00A.M., even though he could have worked longer on that date.

The Carrier asserts that the snow conditions created an emergency situation which mandated immediate action, and. that the Claimant was called for duty at 1:00 A.M. for the purpose of snow removal. Moreover, it appears that at approximately 4:15A.M., snow conditions made it necessary to utilize a snow plow - which was operated by the Roadmaster and Assistant Roadmaster - which (according to the Carrier) is normal procedure.

During that period of time, tte Employe continued to work - at an overtime rate - until 8:00 A.M.

Regardless of the various assertions concerning exclusivity, emergency, etc., the claim would appear to rest on the fact that the Employe was performing overtime services and chose to go home at 8:00 A.M., which would appear to effectively dispute a basis for his claim. Under the rem& before us, we are compelled to dismiss the claim.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
3y Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.