NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25183
Docket Number MW-25230

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company
(Former St. Louis-San Francisco Railway company)

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

(1) The Carrier violated the Agreement when it required the monthly rated machine operators assigned to System Tie Gang T-2-11 to suspend work on their regular positions for five (5) hours on February 2, 1982 (System File B-1799/MWC 82-8-17C).

(2) Because of the aforesaid violation, each monthly rated machine operator assigned to and working on System Tie Gang T-2-11 on February 2, 1982 shall be allowed five (5) hours of pay at his respective straight time rates.

OPINION OF BOARD: A pay claim was filed on March 30, 1982, on behalf of monthly rated machine operators assigned to the Carrier's System Tie Gang T-2-11 working in the vicinity of Demopolis, Alabama on February 2, 1982. The claim alleges that the Carrier violated current Agreement Rule 49(b) when the Claimants "reported to work (on the day in question) and due to the inclement weather" were released by the Roadmaster with only three hours pay.

In its declination of the claim the Carrier references current Agreement Rule 49(a). The Carrier contends that the Claimants were released on the day in question for "their own convenience" and should have been paid, therefore, only for the "actual time worked". Current Agreement Rule 49 at (a) and (b) reads:

"(a) When less than eight hours are worked for the convenience of employees only actual hours worked or held on duty will be paid for.

(b) Hourly paid employees required to report at the usual starting time and place for the day's work, and when weather or other conditions prevent work being performed, will be allowed a minimum of three hours; if held on duty over three hours, actual time will be paid."

The Carrier acknowledges, on property, that the Organization is correct when it states that Rule 49(b) applies only to hourly paid employes and that the Carrier erred when it paid the Claimants for three hours on February 2, 1982, when, in fact, they only worked about one hour. The Carrier continues, however, that by the same token, just because Rule 49(b) applies only to hourly employes. that this does not give monthly employes guarantee of forty hours work per week "if no work is performed". There is no dispute on property over payment rights for the Claimants if they do not choose to work. The dispute centers on why the Claimants did not work on February 2, 1982. If the Claimants had laid off for their own convenience, in accordance with Rule 49(a), they were entitled to compensation only for the time they worked. If, on the other hand, they were told not to work by supervision (in this case) because of weather conditions they were entitled pay for hours they would have opted to work.

The instant case centers, therefore, on the evidentiary issue of whether the Claimants laid off on February 2, 1982, for their own convenience or whether they were ordered to do so by the Roadmaster. If the former is correct, the claim must be denied. If the latter is correct, the claim must be sustained.

The position 'of the Organization is stated in the original claim filed on March 30, 1982, by the General Chairman: "...on February 2, 1982, (the Claimants) reported to work and due to inclement weather Roadmaster Steve Gunn released them, and they were only paid three hours". Variants of the reasons for the claim, which represent no substantial change on the part of the Organization, but which perhaps clarify the Organization's rationale for the claim, include the following statements. The General Chairman's correspondence to the Carrier's Director of Labor Relations dated April 15, 1983, states: "(t)he day in question, February 2, 1982, the employees were released by the Carrier due to inclement weather and it was not for the convenience of the employees". And again, on May 3, 1983, the General Chairman states: "...the employees were willing to work (on the date in question) but due to inclement weather it was the Carrier's decision that they not work". The implication here is clear: (1) the Claimants were "released. from their assignments by managerial decision; and (2) they were released on the basis of current Agreement Rule 49(b).

What is the response of the Carrier's officers on property to the claim? It is not denied by the Manager of Regional Gangs in his correspondence to the General Chairman on May 7, 1982, nor by the Engineer of Maintenance's letter of August 13, 1982, that the Roadmaster 'released" the Claimants on February 2, 1982. The Director of Labor Relation's correspondence of September 21, 1982, states that on February 2, 1982, "...the claimants reported to work, and due to inclement weather, were released by Roadmaster S. Gunn". This statement by the Manager of Labor Relations is corroborated by the Roadmaster himself in a letter attached to the Carrier's June 17, 1983, correspondence to the Organization. In that letter the Roadmaster explains:

"Mr. Dunkin (Manager of Regional Gangs) called, on the radio, and said we not try to work because of the weather. I then contacted foreman Dennis Lafferty and Assistant Foreman S. Cracker, telling them to turn around and head back to camp."

There is no question, therefore, that the Claimants were 'released* by Management on February 2, 1982 because of the weather. The basis for that action appears to have been the mistaken understanding on the part of local supervision that Rule 49/b) applied to monthly rated employes. There can be no other explanation for why the Claimants were paid three hours. As a last point, the Carrier argues that just because the Claimants were released under the circumstances here at bar that this does not mean they had any "desire to perform any service on February 2, 1982...". This argument appears inopportune to the Board in view of abundant substantial evidence in the record to the effect that the Carrier had explicitly released the employes on the day in question shortly after their assignments began. The Claimants state in their original letter to their General Chairman, prior to the filing of the claim, which letter is part of the record, that the Roadmaster "did not ask us who wanted their time cut. He told us what he was going to do".

The Carrier implies, in its argumentation on property and in its Submission to the Board, that the meaning of the phrase "for the convenience of employees" in Rule 49(a) is to be interpreted by and applied by the Carrier, and not the employees. Thus, for example, the application of this line of reasoning to this case permits the conclusion, as the Carrier argues, that the Claimants were released on February 2, 1982 by the Roadmaster for their own convenience because it was raining. Such interpretation is contrary, however, to the normal logic of contract construction whereby an employer keeps all rights to make decisions, in all areas, including decisions relating to assignment of employes under given weather conditions and so on unless such rights are limited by contract. This general philosophy of contract construction is precisely elaborated upon by the Carrier in its Submission. If, however, an employer already had a right, such as to "release" employes in times of inclement weather, why then would it negotiate such right into contract? Clearly Rule 49(a) was not negotiated by the parties to embellish rights which the Carrier already possessed, but to give rights to employes which they did not have prior to the negotiation of this clause. Thus Rule 49(a) must mean that the employes have the right to opt to work less than eight hours on any given day for the Carrier, but in so doing they are to receive compensation only for the hours worked. If Rule 49(a) does not mean this it has no logical reason for being in the Agreement. On merits the claim must be sustained.

On procedural grounds the Carrier also argues that the claim is vague and incomplete because the Claimants have not been identified in the Statement of Claim. Such objection is well taken but not convincing. A simple review of records can reveal to the Carrier who the monthly rated machine operators were who were working on Carrier Gang T-2-11 in the vicinity of Demopolis, Alabama on February 2, 1982.

Each monthly rated machine operator assigned to System Tie Gang T-2-11 on February 2, 1982 are to be compensated for five (5) hours straight time pay equal to what he would have received on that date.

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 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 Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1984.