NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25976

THIRD DIVISION Docket Number MW-25889

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(The Atchison, Topeka and Santa Fe Railway Company

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

'Trackman D. D. LaGrange shall be allowed payment for a call (four hours for two hours forty minutes work or less) because he was called to perform work May 14, 1983 but not used (System File 20-33-8316/ 11-340-40-1).'"

OPINION OF BOARD: Claimant D. D. LaGrange, a Trackman, was called to perform work on his rest day, Saturday, May 14, 1983. He was notified to report to work in connection with track damage caused by a derailment. After preparing to go to work, he received a second call informing him that he was no longer needed. As such, by letter of July 6, 1983, the General Chairman presented a Claim on his behalf for Carrier's alleged violation of Rule 33, Section (h) which reads in pertinent part:

"Rule 33

Section (h) - - Calls. Except as otherwise provided in these rules, employes notified or called to perform work before or after but not continuous with the regular work period will be allowed a minimum of four (4) hours for two hours forty minutes (2'40") work or less."

Carrier's response by letter of October 3, 1983 was that no violation of the Rule occurred. Carrier argued that although the Organization focused upon the fact that Claimant had been "called to perform work," the proper meaning of the Rule came from payment "for two hours forty minutes work or less." Since Claimant performed no work, Claimant was due no compensation. As such, Carrier had applied the Rule correctly and no Rule violation had occurred.

This Board has carefully reviewed the instant case and finds for the Carrier. In the case at bar the primary duty of this Board is to interpret the Rule as written to determine its proper application. What is "proper" is the intent of the parties who by such language provided meaning to their Collective Bargaining Agreement. In the absence of strong probative evidence to the contrary, this Board must focus upon the words used by the parties (Third Division 13991, 13828). If the contracting parties intended to pay

from time of call they would have constructed the governing language of their agreement to say so, as was the case in Third Division Award 18585. In the case at bar they did not do so. The Rule before us is a Work Rule and the Claimant performed no work for the Carrier whatsoever. As such, this Board finds no merit to the Claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.