

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26303
Docket Number **MW-26081**

Gil Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(National Railroad Passenger Corporation
(Amtrak) - Northeast Corridor

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

(1) The Carrier violated the Agreement when it required Messrs. C. Smith, J. Dodd, E. **Downey, E. Mininchelli, K. Gaymon, C. McCartney, D. Strallow, B. Goethie** and R. Holmes assigned to Welding Gang **NO22** to suspend work for **four** (4) hours on December 16, 1982 (System File **NEC-BMWE-SD-600**).

(2) Because of the aforesaid violation, the claimant shall each be allowed four (4) hours of pay at their respective straight time rates."

OPINION OF BOARD: The instant **case** involves the application of Rule 52 which reads as follows:

"Rule 52

WORKING LESS THAN FULL DAY WHEN WEATHER CONDITIONS PREVENT WORK BEING PERFORMED

(a) When the foreman and supervisor in charge determine that weather conditions prevent work being performed, employees in gangs of ten (10) or more reporting at their regular starting time and place for the day's work will be allowed a minimum of four (4) hours [five (5) hours for four (4) day **gangs**]; if held on duty beyond four (4) hours [five (5) hours for four (4) day gangs], they will be paid on a minute basis.

(b) The allowance provided by this rule shall not be used as a basis for determining whether the weather conditions permit work to be performed."

The above language was effective May 27, 1982, and represented a modification of the following:

"Rule 52

WORKING LESS THAN FULL DAY WHEN CONDITIONS PREVENT WORK BEING PERFORMED

Hourly rated employees required to report at usual starting time and place, and so re ordin will be allowed to complete the day's wor .

Thus, there seems to be no dispute that the modification was intended to grant relief to the Carrier from the requirement to make payment for a full eight hours when conditions prevented less than a full day's work for gangs of ten (10) or more.

In this last respect, the Organization contends in its Submission that the Gang consisted of less than 10 employees, therefore, the employees would be entitled to the full day's pay.

The Carrier raised an objection in their Rebuttal brief that the **Employees** had never raised this issue in the handling on the property. The Organization did point out, before the Board, that there were only nine Claimants listed implying that, based on this, the fact there were nine on the Gang was self-evident. However, the Carrier appropriately points out that the fact there are nine Claimants doesn't mean the Gang in question was less than 10. As they point out, **one or more could** have been absent. It may have been possible as well that one or more declined to be listed as a Claimant.

In any event, the Board is satisfied that the Claim as it existed on the property was not based on the theory that Rule 52 did not apply because the Gang in question involved less than 10 employees. We must limit ourselves **to** the issues raised by the Parties before the Claim was appealed to the Board.

The basic contention advanced by the Organization on the property was that Rule 52 did not apply because the Supervisor did not seek the Foreman's concurrence that the weather prevented "work" from being performed. Indeed, the Union contended that there was various equipment maintenance that could have been performed.

After a review of the record, the Board must agree with the Carrier. The Organization seeks to apply too strict of a construction to Rule 52.

This is basically for two reasons. First, the Carrier validly argues that little relief from the dictates of the original Rule would occur for large gangs if the Rule allowed the Foreman, a bargaining unit **employee**, to insist on a joint determination whether conditions prevent "busy work" or "make-work projects." When the Rule talks of conditions **preventing "work"** being performed, it is most reasonable to conclude that it was **referring to** the Gang's regular and customary work, in other words, that work which related to its predominate and primary function. In this case, the Statement of Claim itself recognized weather conditions prevented the Gang from accomplishing its assigned task that day.

The second respect in which the Organization interprets the Rule too strictly is their insistence, under these unique facts and circumstances, that there be absolute compliance with the requirement that a joint determination be made, that conditions prevented work from being accomplished. It is **self-evident** that this requirement was intended to prevent abuse by the Supervisor. In this case, **there** is absolutely no dispute that weather conditions prevented the Gang's work from being performed. The Claim not only recognizes this but

there is no evidence the Foreman took exception to the Supervisor's decision. Thus, the uncontested facts show that even if the Foreman had been consulted he would have been unreasonable in withholding his concurrence under these facts. The Organization's case would have been strengthened had there been a legitimate dispute over the necessity of weather conditions preventing the Gang's regular work from being accomplished.

In **view** of the foregoing, the Claim is denied.

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:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.