

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

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

(1)(a) The Carrier violated the Agreement **when** it required Messrs. J. S. Craig, L. **Slavin**, H. Douglas, E. Dickson, W. Allison, G. Young, A. Plant, G. Wright, W. **McKinnon**, W. Siwarski, N. Welch, M. Zimmerman, J. **Madron**, C. Race, K. **Briscoe**, W. Crook, A. **Affonsa**, J. Wright and K. Harris assigned to either Gang Z-172, Gang Z-182 or Gang Z-192 **to** suspend work for four (4) hours on December 12, 1983.

(b) The Carrier violated the Agreement when it required Messrs. J. S. Craig, L. **Slavin**, H. Douglas, E. Dickson, W. Allison, G. Young, A. Plant, D. Williams, G. Wright, J. Williams, W. Siwarski, G. Addison, B. **Sudler**, N. Welch and R. Merlini assigned to either Gang Z-172 or Gang Z-182 to suspend work for two and one-half (2 1/2) hours on December 13, 1983 (System File NEC-BMWE-SD-834).

(2)(a) Because of the violation referred to in Part (1)(a) hereof each claimant listed **therein** shall be allowed four (4) hours of pay at their **respective** straight time rates.

(b) Because of the violation referred to in Part (1)(b) hereof each claimant listed therein shall be allowed two **and** one-half (2 1/2) hours of pay at their respective straight time rates."

FINDINGS:

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

The carrier or carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at **hearing** thereon.

Due to weather related reasons, on December 12, 1983, Gangs Z-172, 182 and 192 of the Carrier's Panel Renewal System were required to suspend work after working four hours. Although the Carrier asserts that on December 13, 1983, Claimants were given the option of continuing work (**a** fact that does **not** determine the **outcome** of this case in light of our ultimate holding), on that date work was suspended for Gangs Z-172 and 182 after working five and one-half hours, again due to weather related factors. Although the gangs in issue have an authorized force of ten or more (Z-172 had an authorized force of 12; Z-182 had 13 and Z-192 had **14**), on the relevant dates those gangs had less than ten employees actually reporting for duty. The Carrier compensated Claimants for time actually worked on December 12 and 13, 1983. The Organization seeks additional payment to Claimants asserting that they were entitled to eight hours pay for each day.

Rule 32 states:

"FORTY HOUR WORK WEEK"

Except as otherwise provided in this Agreement, AMTRAK will establish for all **employees** a work week of 40 hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off **in** each **seven** (7). The work week may be staggered in accordance with AMTRAK's operational requirements. So far as practicable, the days off shall be Saturday and Sunday."

Rule 52 states:

"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."

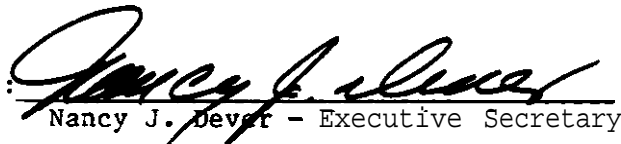
Thus, Rule 52 permits payment of less than eight hours for shortened work days due to weather related conditions for gangs of **ten** or more. Under the circumstances of this case, we do not agree with the **Organization** that Rule 52 is inapplicable because the actual number of employees reporting for work on the days in issue was less than ten per gang. It is undisputed that the **gangs** were authorized at levels in excess of ten employees per gang. A fair reading of Rule 52 is consistent with the Carrier's position that the overall makeup of the **gang** dictates application of the Rule. We find nothing **in** the record to indicate that the Carrier has manipulated the levels of the **gangs** so as to always keep the levels at more than ten or has made work assignments **in** order to avoid meeting its contractual obligations under Rule 32. Indeed, if such evidence existed, we would sustain the Claim. However, in this case, the record demonstrates that the Organization has not met its burden of showing a Rule violation **and** we must therefore deny the Claim.

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 28th day of January 1988.