

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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 B&B Foreman Emge and Carpenters Bell, Brown, Kramer, Stewart, Wilson, Myers, Howe and Cefeloni, assigned to Gang C-142, to suspend work for four (4) hours on September 28, 1984 and October 1, 1984 (System File NEC-BMWE-SD-1144).

(2) Because of the aforesaid violation, each claimant listed in Part (1) hereof shall each be allowed an additional eight (8) 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.

This is a contract interpretation case disputing the proper meaning and application of Rule 52 which reads in pertinent part that:

"(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...."

There is no dispute that on September 28 and October 1, 1984, Gang C-142 had an authorized force of ten (10) men and that due to weather conditions, Rule 52 was invoked. On both dates in question not all employees of the gang reported to work.

The Organization argues that the proper interpretation of Rule 52 requires the counting of effective strength. On September 28, 1984, the effective strength of the gang was nine (9), while it was only eight (8) on October 1, 1984. As such, since the gangs were not of ten (10) or more men they were entitled to a full day's pay, rather than the minimum four (4) hours received.

The Carrier denies any Agreement violation arguing that the intent of the Rule is not effective strength, but authorized strength. It notes that the gang had an authorized strength of ten (10) employees and that all positions were filled on the claim dates.

This Board's review of the entire record finds it to support the Carrier's position. We also find that this issue has been previously decided under almost identical conditions between the same parties. In Third Division Award 26778, this Board stated:

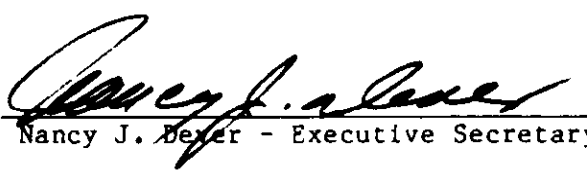
"Thus, Rule 52 permits payment of less than eight hours for shortened work days due to weather related conditions for gangs of ten or more. Under the circumstances of this case, we do not agree with the Organization that Rule 52 is inapplicable because the actual number of employees reporting for work 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."

On a careful review of the record and based upon the reasoning and conclusion of Third Division Award 26778, this Board denies the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.