

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31150
Docket No. MW-30318
95-3-92-3-122

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. 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 Agreement was violated when the Carrier instructed Messrs. C. Modzelewski, E. Richert, P. Archibald, F. Abate and W. McClendon to perform service (monitor the air temperature) on June 23, 24, 30, July 1, 4, 7, 8, 14, 15, 22, 28, and 29, 1990 and then failed and refused to compensate them for said service (System File NEC-BMWE-SD-2839 and NEC-BMWE-SD-2840 AMT).

(2) As a consequence of the aforesaid violation, Claimants C. Modzelewski, E. Richert and P. Archibald shall each be allowed twelve (12) hours' pay at their respective time and one-half rates of pay for each of the dates cited above except July 4, 1990, Claimant F. Abate shall be allowed eight (8) hours' pay at his respective time and one-half rate of pay for July 4, 1990 and Claimant W. McClendon shall be allowed seven (7) hours' pay at his respective time and one-half rate of pay for July 4, 1990."

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 employee 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 combination of several claims in which the Carrier made arrangements with the Claimants, assigned as Track Inspectors, for possible work assignment on various rest days and holidays in the summer of 1990.

The Organization contends that the Claimants were required as follows:

"The Claimants were instructed to call the Newark, New Jersey airport every hour and be governed by the temperature reported by the airport. In the event the air temperature rose above 90 degrees, the Claimants were to immediately begin inspecting track."

It is readily acknowledged that when temperatures exceed 90 degrees, there is the likelihood of "track buckles" or "sun kinks" which requires inspection and resulting action by Track Inspectors. Two of the Claimants were in fact required to report for work under these circumstances, and they were paid by the Carrier for the time actually worked.

It is the Organization's contention that the Claimants were directed to perform standby service in being required to make regular checks on the temperature and that the Carrier "took the Claimants' free time for its own use and in the furtherance of its own business." As a result, the Organization argues that the Claimants must be paid for this "standby" service.

The Carrier takes a different view of what it calls a long-standing practice. The Carrier contends it made arrangements with Track Inspectors as a means of insuring their opportunity to work on rest days and holidays. This consisted simply of checking the temperature at appropriate intervals so that when the temperature exceeded 90 degrees the Track Inspectors were aware, without further instruction, that their services would be required.

The Carrier contends that the arrangement did not interfere with the Claimants' personal activities. The Carrier denies that the Claimants were required to make hourly calls to check the temperature, but even such checks as were made were of a few moments and the intervening time cannot be characterized as work or standby service.

A number of Awards cited by the Organization can be readily distinguished from the matter here under review. Most of these involve direct orders for employees to remain at a fixed place to be available for work as required. As one example, Third Division Award 24373 concluded:

"The Board is of the view that if a Carrier requires individuals to remain at a designated place, those individuals are entitled to compensation absent some rule or practice to the contrary."

This is clearly not the situation here. The Board finds that here, as a matter of accepted practice, the Track Inspectors readily learned of their opportunity or obligation for overtime work simply by noting if the temperature rises to the degree making such work necessary. In sum, this practical approach does not rise to the level of standby duty which, by its nature, imposes severe or total restrictions on the employee's movements.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of September 1995.