

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32126

Docket No. MW-31821

97-3-94-3-116

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

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE: (

(Burlington Northern Railroad (former St. Louis-

(San Francisco Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to pay Rail Gang No. 1 forces for service they performed at Olathe, Kansas on October 9, 1991, in response to their being called out during their rest period by Special Agent J. R. Stanley to perform said service (System File B-2227-2/8MWC 92-01-03 SLF).**
- (2) As a consequence of the violation referred to in Part (1) above, each member of Rail Gang No. 1, on the date in question, shall be allowed two (2) hours and forty (40) minutes' pay at their respective time and one-half rates, as provided in Rule 74.”**

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 were given due notice of hearing thereon.

After completion of their regularly assigned work on October 9, 1991, members of Rail Gang No. 1 were called out of their outfit cars and were addressed by Carrier Special Agent J. R. Stanley concerning the Carrier's policy about women in the outfit cars and on the Carrier's property. At the time, some members of the gang were showering, sleeping or eating. This claim seeks compensation for the employees for attendance at that discussion.

Rule 74 states in pertinent part that "employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of two hours and forty minutes, at time and one-half rate" The question, then, is whether attendance at this type of discussion was "work."

Included in the record before this Board is a letter signed by 20 member of Rail Gang 1 which states:

"* * *

While working in the Olathe, Kansas area on October 9th, 1991, after putting in the assigned working hours for the day the men retired to the outfit cars for their off hours. The men where [sic] interrupted and called out of camp by Asst. Special agent incharge [sic] J. R. Stanley. At the time of the call out some of the men were in the shower, sleeping or eating.

The reason for the call out was the discussion of women on the Company property as well as in the outfit cars.

* * *

We agree with the Organization that employees are not expected to volunteer their services. However, the analogy here is to the often litigated issue concerning whether employees are to be compensated for attendance at rules classes. An important factor in resolving these kinds of disputes focuses upon whether attendance at a specific class or meeting is mandatory. We simply cannot discern from the record before us whether attendance at this discussion by Special Agent Stanley was mandatory. While, given the nature of the meeting, we can certainly speculate, in the end that is not our

function. Rather, to meet its burden, it is the Organization's function in a rules case to demonstrate all the elements of its claim. Here, that was not done. The Organization has not demonstrated that attendance at this particular discussion was mandatory. The Organization's burden has not been met. The claim will be denied.

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 13th day of August 1997.