

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32388
Docket No. MW-31771
97-3-94-3-55**

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Burlington Northern Railroad**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to compensate the affected members of the Regional Steel Gang, headquartered in camp cars at Bucklin, Missouri, who were locked out of work on June 24, 1992 (System File C-92-TO75-38/5MWA 92-10-12B).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants* listed below shall each '... be paid for call-outs, travel time, and milage (sic) at their rate of pay ***'**

| | | |
|--------------------|----------------------|-----------------------|
| *S. Miller | A. Rice | R. Smith |
| S. Fenton | M. Crow | L. Miller |
| S. Bowman | K. Silk | C. Casady, Jr. |
| M. Peyton | D. Campbell | P. Krigbaum |
| W. Fletcher | S. Glisan | T. Mentado |
| W. Sullivan | L. Valladares | C. Bohrman |
| R. Beeler | K. Webster | D. Chambers" |
| R. Parcel | | |

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.

The Claimants herein are assigned to a regional steel gang with headquarters in camp cars at Bucklin, Missouri. They regularly work a Monday-Friday schedule, commencing at 10:00 A.M.

Because of a strike involving another Organization, the Carrier issued the following notice to employees:

"NOTICE OF EMERGENCY FORCE REDUCTION

Due to the labor dispute between the Company and its IAM-represented employees, the Company's operations have been suspended. This action is taken pursuant to BN's rights under the promulgation of work stoppage rule involving the IAM, applicable agreements and BN's managerial discretion and prerogatives.

Employees not otherwise notified should not report for service."

The copy of this notice furnished the Board carries no date. There is no dispute, however, that it applied commencing June 24, 1992 and was properly issued under Rule 8.B. There is no indication how the notice was officially presented to the Claimants at their camp-car work location. It is not unreasonable to conclude, however, that word of the suspension of operations reached the Claimants no later than prior to their starting time on June 24. A statement from the Roadmaster indicated that he arrived at the work site at 8:30 A.M. and found that all but three gang members "had already gone home." The Roadmaster's statement indicated he told the three remaining employees "they did not have to leave camp" and that, "To the best of my knowledge no company official sent anyone home from my gang."

Although there was no work available, the Carrier paid the Claimants their regular pay for June 24.

On the evening of June 24, the strike having been resolved, the Claimants were notified to return to work the following day, Friday, to complete their week's assignment.

Many of the Claimants live extensive distances from the work site. The Organization seeks two separate remedies: first, that the Claimants receive pay for travel time and mileage allowance for the additional round trip between their home and the work site which, absent the one-day work suspension, they would not have been required to undertake; and second, pay for being "called" back to work on Friday.

The Carrier argues that no Rule cited in the claim, or indeed any other Rule, calls for such payments. The Carrier further argues that "the travel for which these employees now seek recompense was undertaken by them voluntarily [and] the members of the regional steel gang were never instructed to go home." In effect, the Carrier contends that the Claimants could simply have remained in place at the work site.

The Carrier's reasoning is necessarily the exercise of 20-20 hindsight. At the time of issuance of the Notice of Emergency Force Reduction, the duration of such "emergency" was obviously unknown. The Notice obviously states no anticipated duration for the work suspension. The fact that it lasted only one day (thus possibly making it reasonable for the Claimants to remain at the work site) was simply not known on the morning of June 24. Given this situation, coupled with a notice that "employees . . . should not report for work", the Claimants were left with no other option but to return to their homes.

The Organization also points out that, assuming all camp support staff was similarly relieved of duty, the Claimants had no way of knowing that properly anticipated services, including meals, would be available.

As to the portion of the claim regarding "call" pay for June 25, the Board finds no basis for such payment. Rule 30 requires pay for "employees notified or called to perform work outside of . . . the regular work period." All that occurred here was that the Claimants were advised to resume work during their "regular work period."

As to travel time and mileage allowance, the Carrier properly notes that Rule 35.G is not applicable, since the Claimants were not required to fill a relief assignment or perform extra or temporary service. Any remedy would be limited to travel time and/or mileage allowance which is provided for employees located at camp car sites when they report to work at the beginning of the work week and/or leave work at the end of the work week. If the Claimants receive such pay or allowance, then it properly must be applied to the June 24-25 period (limited, of course, to those employees actually reporting for work on June 25). If no such pay or allowance is provided, the Board recognizes the inconvenience imposed on the Claimants but finds no Rule to support the remedy sought.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of December 1997.