

Award No. 35631
Docket No. MW-33588
01-3-97-3-24

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Burlington Northern Santa Fe (former Burlington
(Northern Railroad 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 allow the monthly rated employees assigned to Gang RP-14 at Karen, Texas to perform work on November 17, 1995 and thereafter paid them only three (3) hours of the eight (8) hours' pay they were contractually entitled to (System File TP-95-03A/MWD960220AB BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants listed below shall each be compensated five (5) hours, pay at their respective straight time rates.**

B. K. Payne,
E. W. Pierson,
J. G. Thweatt

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 facts giving rise to this claim do not appear to be contested. Claimants B. K. Payne, R. Valenzuela, E. W. Pierson, W. D. Devoss, J. G. Thweatt and L. D. Johnson established and hold seniority in the Maintenance of Way and Structures Department. On date of claim they were all "monthly rated employees," regularly assigned to work eight hours per day, Monday through Friday with Saturday and Sunday designated as rest days. [Monthly rates of pay are predicated on an all-service rendered basis. In other words, for all services required during regularly assigned hours (which include contractually agreed to Holidays except for the day after Thanksgiving Day) within a given calendar month, the Agreement contemplates compensation at the applicable monthly rate of the respective positions].

The case presents the question what Agreement provisions govern when monthly rated employees are not able to work a complete shift due to inclement weather. On November 17, 1995, the date the instant dispute arose, the Claimants were all regularly assigned to Gang RP-14 at Karen, Texas. Due to heavy rain, the supervising Roadmaster released monthly rated employees B. K. Payne, E. W. Pierson, J. G. Thweatt and R. Valenzuela before the workday began. Each of these employees was compensated three hours, as were the hourly rated employees sent home due to the weather that day. Monthly rated employees W. D. Devoss and L. D. Johnson, who were also released early due to the inclement weather on November 17, 1995, each had performed five hours service and were compensated for the five hours they performed service. In this claim, the Organization alleges that in these factual circumstances the Claimants each should have been paid eight hours.

In support of the claim, the Organization relies on an asserted "decades long past practice" under Rule 25 (A) and (C) and cites to Third Division Award 25183 and Public Law Board No. 4768, Award 49 as controlling arbitral precedent. For its part, the Carrier maintains that the express language of Rule 25(D) governs, and that Claimants Devoss, and Johnson were properly paid five hours thereunder, citing Third Division Award 12689. As for Claimants Payne, Pierson, Thweatt and Valenzuela, the Carrier asserts that they were not entitled to any compensation under Rule 25(D) but were erroneously paid a "windfall" of three hours under Rule 25(E). Careful examination of

the facts, the clear and unambiguous contract language of Rule 25(D) and the cited precedents persuades us that the Carrier correctly denied these claims.

The Parties are not in agreement about much else in this case, but there seems to be consensus that Rule 25(E), under which Claimants Payne, Pierson, Thweatt and Valenzuela were paid the three-hour minimum, really has no application at all to monthly-rated employees. In that connection, sustaining Third Division Award 25183, which the Organization cites in support of the instant claim, is in accord. Other than that specific holding, however, close examination shows that Award 25183 has no authoritative value in the instant case because the contract language under interpretation in that case differed significantly from the language before us in the present case. On the other hand, denial Third Division Award 12689, cited by the Carrier, was virtually identical to the language of Rule 25(D). Specifically, the language of Rule 49(a) which the Board construed in Award 25183 contained only the underlined words, but none of the words in bold in Rule 25(D) now under analysis in this case and in the identical contract language interpreted by the Board in Award 12689:

“Rule 25 BASIC DAY

- D. When less than eight (8) hours are worked for convenience of employees, or when regularly assigned for service of less than eight (8) hours on rest days and holidays, or when, due to inclement weather, interruptions occur to regularly established work period preventing eight (8) hours work, only actual hours worked or held on duty will be paid for except as provided in Section E of this rule.”

In short, sustaining Award 25183 turned on the construction of the phrase “for convenience of employees,” whereas denial Award 12689 turned on the “inclement weather” provision.

Based on all of the foregoing, the claim presented in this case is denied.

AWARD

Claim denied.

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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 28th day of August, 2001.