

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 35958  
Docket No. MW-34788  
02-3-98-3-500

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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 required monthly rated employee M. A. Lees, assigned to Regional Tie Gang TP-07, to suspend work on November 2, 1992 and compensated him for only three (3) of the ten (10) scheduled hours of work on that date (System File T-D-616-B/MWB 93-04-07B BNR).
- (2) The Agreement was violated when the Carrier required all monthly rated employees, including Messrs. J. E. Thomas, R.W. Soggie, R. G. Richards, A. L. Green, J. L. Graybill, J. B. Wiebelhaus, L. J. Rasco and B. Coulston, assigned to Regional Undercutter Crew UC-12 to suspend work on May 1, 10 and 17, 1995 and only compensated them for three (3) of the eight (8) scheduled hours of work on those dates (System File T-D-972-B/MWB 95-09-28AD).
- (3) As a consequence of the violations referred to in Part (1) above, Mr. M. A. Lees shall be allowed ‘...seven (7) hours straight time at the Assistant Foreman rate of pay and any overtime which was worked on November 2, 1992 by Gang TP-07.’
- (4) As a consequence of the violation referred to in Part (2) above, ‘\*\*\* each monthly rated employee assigned to Crew UC-12 on claimed dates now receive an additional five (5) hours pay for May 1, 10, and 17, 1995. Pay is to be at each Claimant’s respective rate of pay.’”

**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.

At the time of the incidents in question, Claimant M. A. Lee had established seniority as an Assistant Foreman. He was assigned and working as such on Regional Gang TP-07 when the events of this dispute occurred. He was a monthly-rated employee with an assigned workweek that consisted of four ten hour workdays.

Claimants J. E. Thomas and R. W. Soggie had established seniority as Foremen; Claimants R. G. Richards and A. L. Green had established seniority as Assistant Foreman; Claimants J. L. Graybill and J. B. Wiebelhaus had established seniority as Group 2 Machine Operators; and Claimants L. J. Rasco and B. Coulston had established seniority as Group 3 Machine Operators. All were assigned and working their respective positions on Region Undercutting Crew UC-12 when the events involved in this dispute occurred. They were monthly-rated employees and had assigned workweeks of five eight-hour days, Monday through Friday.

The facts in this matter appear to be uncontested. On November 2, 1992, Claimant Lees reported for duty at his assigned starting time. However, the Carrier did not permit him to work his entire shift due to inclement weather (blizzard and ice storm) and only compensated him for three hours.

On May 1, 10 and 17, 1995, Claimants Thomas, Soggie, Richards, Green, Graybill, Wiebelhaus, Rasco and Coulston reported for duty at the assigned starting time but were denied the right of work opportunity when the Gang Roadmaster determined that the weather conditions were such that they could not perform work. While the Claimants desired to complete their workday, the Carrier required that they suspend work for the day and only compensated them three hours.

The Organization argues that the Carrier violated the Agreement in this case. The Organization's position rests in part on the fact that the Claimants are monthly-rated employees. Rule 25E, which clearly applies to hourly-rated employees provides that hourly-rated employees are guaranteed three hours of work when required to report to work but then cannot remain on the job because of inclement weather. Further, while the Organization admits that the language of Rule 25D seems to indicate that monthly-rated employees are only paid for hours worked in the event of inclement weather, the Organization claims that a past practice exists of paying monthly-rated employees for a full day's work even if they cannot work because of bad weather. Based on this claim, the Organization contends that Claimant Lee should receive the remaining seven hours for the day he was sent home and only paid for three hours and the remaining Claimants should receive an additional five hours for all days for which they were sent home and only were paid for three hours.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof in this matter. The Carrier contends that Rule 25D is clear and controls this matter. The plain language of 25D provides that in the event of inclement weather, only actual hours worked or held on duty need be paid to employees, "except as provided in Section E of this rule." According to the Carrier, Section 25E is relevant to the instant case in that it explains how hourly-rated employees are paid in situations involving inclement weather. 25E provides as follows:

"When hourly-rated employees are required to report at usual starting time and place for the day's work and conditions prevent work being performed, they will be allowed a minimum of three (3) hours at pro rata rate. If not held on duty over three (3) hours, actual time so held will be paid for. This will not apply to employees notified in advance of usual starting time. Except in an emergency, when required to patrol track during heavy rains, employees reporting will not be required to work in the rain for the sole purpose of receiving payment under this Section."

Thus, the Carrier claims that because 25E states the exceptions and refers to hourly-rated employees only, then it follows that 25D is the controlling Rule in this case, as the Claimants are monthly-rated. The Carrier takes the position that 25D provides for no minimum compensation in circumstances such as these, and therefore in this case contends that the claims should be denied.

After a review of the evidence, the Board finds that the Organization has not been able to sustain its burden of proof in this matter. It is clear that Rule 25D is applicable for the instant case. We note that when the language of the Agreement is clear and

unambiguous, as is Rule 25D, the Board's function does not allow us to overrule that plain language (See Public Law Board No. 4402, Award 26).

Rule 25D specifies that when less than eight hours are worked due to inclement weather, only the actual number of hours worked or held on duty will be paid, with exceptions as stated in Section 25E. Rule 25E provides when hourly-rated employees are required to report at their usual starting time and place, they will be guaranteed a minimum of three hours of pay. Thus, it is clear that 25D applies to monthly-rated employees and such employees are not guaranteed pay in the event of inclement weather, beyond the amount of time they are required to remain at the work site.

The Organization claims that there is a past practice of paying monthly-rated employees a full day's work even if they are sent home because of inclement weather. However, in order to prove a past practice, the Organization must provide sufficient evidence to show that such a practice does exist and the record does not yield sufficient evidence to prove this point. Thus, we reject this argument.

Based on the record in the instant case, we find that the Carrier acted appropriately when it paid the Claimants only three hours on the dates in question. The claim is 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 8th day of March, 2002.**