

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40387
Docket No. MW-40097
10-3-NRAB-00003-070274
(07-3-274)**

The Third Division consisted of the regular members and in addition Referee Michael D. Gordon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier reduced the basic day of eight (8) hours to five (5) hours for most of the employees assigned to Gang TP-06 on May 31, 2005 [System File C-05-P018-12/10-05-0218(MW) BNR].

(2) As a consequence of the violation referred to in Part (1) above, the Claimants (employees assigned to Gang TP-06 who were not allowed to work the full basic day on May 31, 2005) shall now each be compensated for three (3) hours at their respective straight time rates 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.

Certain members of Gang TP-06 were assigned to work near Harlan/Portsmouth, Iowa, on May 31, 2005. After they worked more than three hours, it started to rain. Supervision checked with WeatherData and concluded that existing and expected inclement weather (severe storms and lightening) required a shortened work day for safety reasons.

The Claimants were told to put the track together and go home. By the time the machines returned some ten miles away, the Claimants assert that it was not raining. They had actively worked, and were paid for, five hours.

The claim alleges a violation of Rules 1 and 25 and seeks three hours straight time pay for each Claimant. The Organization asserts the Carrier failed its burden of proving continued inclement weather and, in addition, Rule 25 does not provide for reducing a regular work day to less than eight hours on the unproven possibility of inclement weather.

The Carrier contends that (1) designating the rain day was not arbitrary and therefore, within supervision's discretion (2) the decision rested on sound information at the time made (3) the Claimants were not identified (4) there is no proof that the rain stopped (5) if the rain stopped, it could have restarted (6) weather conditions can vary within a large work area and (7) prior arbitration Awards place the burden of proof on the Organization and support the Carrier's contract reading.

Rules 25D and 25E provide, in relevant part:

“D. When less than eight (8) hours are worked . . . 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.

- E. When inclement weather conditions prevent employees from performing work on a regular scheduled workday, they will be allowed a minimum of three (3) hours at pro rata rate. If held on duty over three (3) hours, actual time so held will be paid for. . . .”**

Thus, after more than three hours’ duty on a regularly scheduled workday, employees are paid for actual hours worked when “inclement weather” or “inclement weather conditions” prevent completion of the regular eight hour day. “Inclement weather conditions” has broader reach than “inclement weather.” It covers weather that threatens to become bad but is not currently bad.

It is undisputed that inclement weather and inclement weather conditions existed at the time that Supervision made and announced its decision to work a shortened day. Supervision also took reasonable steps to determine that the weather might not improve for the remainder of the work day. There is no proof that it acted for no reason, for bad reason or in any arbitrary or other prohibited manner at the time that it made its initial decision. Once properly made and begun, the Carrier is not required to prove that the weather proceeded in accord with its original expectations.

Even assuming that the severe weather abated by the time the Claimants left work, given the information from WeatherData, it was possible it might return. The Agreement permits managerial discretion not only when inclement weather exists but also when “conditions” presage inclement weather. Weather predictions are highly unreliable. The Agreement does not require the Carrier to guarantee accurate weather forecasting.

Supervision has a wide range of reasonable discretion to base decisions on weather conditions. Its action here falls squarely within its permissible authority. It was rooted in sound available information. There is no evidence of improper

Form 1
Page 4

Award No. 40387
Docket No. MW-40097
10-3-NRAB-00003-070274
(07-3-274)

purpose. Indeed, in substantial part, it reflects an effort to protect the Claimants' health and safety.

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 25th day of March 2010.