Award No. 17193
Docket No. MW-17543

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when, on February 2, 1967, it required the claimant section laborers* to suspend work for five (5) hours allegedly 'account inclement weather' and allowed each of them only three (3) hours of pay. (System file M-1796)

(2) Each of the claimants* be allowed five (5) hours' pay at his respective straight time rate because of the violation referred to in Part (1) of this claim.

*Claimants are:

Section No. 3 Joyce Avenue, Ohio

S. E. Menerlin	**C. E. Burns**	C. W. Marcum
J. W. Barnett	**J. H. Harris**	H. W. Colbird
C. L. Coxby	W. L. Sanders	R. A. Brown
H. H. Fields	W. W. Richardson	E. A. Stinson
C. L. Isom	R. N. Patrick	C. H. Brown

Section No. 2 Circleville, Ohio

Albert Chaffin	D. W. Cosby	Dwight Coffenberger
M. J. Allen	J. W. Shonkwiler	Chancey Valentine
M. M. Smith	Russell Stewart"	

EMPLOYES' STATEMENT OF FACTS: All of the claimants were regularly assigned as section laborers on either Section No. 2, Circleville, Ohio or Section No. 3, Joyce Avenue, Ohio (see Part (2) of our Statement of Claim). Their assigned hours extended from 7:30 A.M. to 4:00 P.M., including a thirty (30) minute meal period.

When Section Gangs Nos. 2 and 3 began their day's work at 7:30 A.M. on February 2, 1967, a light rain was falling. It continued to rain until about 10:00 A.M., at which time the rainfall ceased and it began to sleet and snow. The snowfall continued until sometime after 4:00 P.M. on that day. Both gangs were assigned to and did perform track surfacing and other routine maintenance work until 10:30 A.M., when the claimants were

"We fail to understand how the weather could be considered inclement for only certain employes and in fact, according to recorded records and past practices it could not be considered inclement within the meaning of the terms of the agreement and existing conditions insofar as working employes is concerned.

"Therefore please consider this as a claim for time for each employe listed in Attachment-A at his respective rate of pay for five hours each on February 2, 1967.

"We are citing Rule 37-A and Rule 16 as well as any other rule in the MW Agreement that might pertain thereto in support of our request."

Carrier declined the claim.

(Attachment not reproduced)

OPINION OF BOARD: Claimants seeks a full day's pay for February 2, 1967, a day on which they actually worked from 7:30 A.M. to 10:30 A.M., at which latter time they were ordered to quit work because of asserted inclemency of the weather.

They claim that they were entitled to a full day under the provisions of Rule 35, which reads:

"Except as otherwise provided in these rules, eight (8) consecutive hours, exclusive on the meal period, shall constitute a day's work."

Carrier's defense rests on Rule 37(b) reading:

"When less than eight (8) hours are worked for convenience of employes, 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 regular established work period preventing eight (8) hours work, only actual hours worked or held on duty will be paid for except as provided in these rules." (Emphasis ours).

The instant dispute revolves around the meaning of the phrase "inclement weather." The term must certainly be deemed a relative one; weather might be classified as inclement for one activity but sufficiently clement for another activity. Essentially, therefore, it is a matter of judgment. Rhubarbs have developed over an umpire's exercise of his discretion in halting a baseball game because of inclement weather—particularly in instances when the sun emerges brightly just after the stands have been emptied. In our instant case, Employes cite statistics showing the total rainfall for the day and compare it with other days that the crew was worked when the total exceeded that of the day in dispute. If anything, this proves that whoever made the decision to cease operations on the day in question did not do so because of any continuing scheme to deprive claimants of work. Indeed, there is a total absence of any indication of bad faith on the part of Carrier. Such being the case, we do not feel we have any right to second-guess the managerial decision to stop work. A work stoppage during inclement weather is as much, if not more, in the interest of employes as it is in the interest of management.

In the absence of a showing of bad faith underlying the decision, we will not tamper with management's prerogative to decide whether or not the weather is sufficiently clement for the conduct of its work.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1969.

Central Publishing Co., Indianapolis, Ind. 46206 Printed in U.S.A.