

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20621
Docket Number MW-20660

Joseph A. Sicklas, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Baltimore and Ohio Railroad Company

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

(1) The Agreement was violated when Class A Machine Operator Randy Powell, Jr. and Class B. Machine Operator C. R. Corbin were allowed only four hours' pay on December 8 and 15, 1972 and on January 19 and February 1, 1973.

(2) The Agreement was violated when Class A. Machine Operator R. T. Sparks and Class B. Machine Operator Hubert Morrison were allowed only four hours of pay on December 8 and 15, 1972 and on January 19, 1973.

(3) The Agreement was violated when Class B Operator Kenneth Feters was allowed only four hours of pay on December 15, 1972 and on January 19 and February 1, 1973.

(4) Each of the claimants identified in Parts (1), (2), and (3) above now be allowed twelve (12) hours' pay at their respective straight-time rates. (Carrier's File 2-MG-421).

OPINION OF BOARD: On the dates in question, Claimants failed to complete eight (8) hours of work. They (Machine Operators) assert that they were precluded from completing their tours due to inclement weather. On the other hand, Carrier alleges that there was work available for Claimants on the days in question, but that they "requested" to be returned to Camp Headquarters.

On the property, Claimants relied upon Rule 16 (a):

"(a) Regularly established daily working hours will not be reduced below eight (8) for five (5) days per week to avoid making force reductions, except by mutual agreement, but this number of days may be reduced in a week in which holidays occur within the five (5) days constituting the work week by the number of such holidays."

The Board feels that this dispute must be resolved on the basis of burden of proof as developed on the property.

The initial claim contended that the Agreement fails to provide for suspension of time for inclement weather. In reply, Carrier stated that:

"...the employees were not laid off on account of inclement weather. The men present were offered a complete days work, but refused and requested to be taken back to camp headquarters on each of the days mentioned in your letter. It was for the convenience of the employess that less than eight hours were worked...."

Although Claimants responded to the above-cited letter, and discussed the applicability of Rule 16(b), they did not contradict that recitation.

Again, in the final denial letter, Carrier repeated that Claimants requested to be returned to Camp Headquarters even though there was work to be performed.

Claimants never replied to the final denial letter until the matter was submitted to this Board.

This Board has consistently determined that it may only consider matters which have been raised on the property. Moreover, the party asserting the violation must prove the essential elements of the claim. When Carrier made the assertion (on two (2) occasions) that the Claimants refused full days of work, it was incumbent upon Claimants to submit probative evidence to the contrary. See Award 18863.

The Organization, in its Ex Parte and Rebuttal Submissions, presents argument which contains a certain degree of appeal. It questions the identity of the work which was allegedly refused, inasmuch as all employees appeared to be employed on the same project, etc. However, these matters should have been submitted on the property, rather than directly to this Board.

We will dismiss the claim for failure of proof.

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 Employee involved in this dispute are respectively Carrier and Employee 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

Award Number 20621
Docket Number MW-20660

Page 3

That the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1975.