

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22997
Docket Number MW-22739

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Chicago, Rock Island and Pacific Railroad Company
(William M. Gibbons, Trustee)

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

(1) The Agreement was violated when Machine Operators T. Green, T. Veal, C. Bussey, C. Gilbert, D. Foraker, E. Johnson, L. Morrison, R. Pauley, T. I. Williams and Foremen A. Fulton and G. Morrison were not permitted to perform their full tours of duty on July 17, 18, 19 and 20, 1977 and were not permitted to leave their lodging headquarters, as a consequence of which they each suffered a loss of 22 hours of earnings (System File 11-E-708/L-126-1636).

(2) Each of the claimants named in Part (1) above shall be allowed twenty-two (22) hours of pay at their respective straight-time rates."

OPINION OF BOARD: Claimants were scheduled to perform work on claim dates but they were precluded from doing so by the State Health Department, after some employees became violently ill and two died.

Claimants assert a violation of Rule 35 because established working hours were reduced below eight (8) without an agreement to that effect. Also they suggest that they were "...actually held on duty for eight and one-half hours on each of the claim dates."

Carrier compensated each Claimant in the amount of three (3) hours per day in asserted compliance with paragraph 2 of Rule 35 which mandates that amount of payment when "...conditions prevent full day's work being performed..."

This dispute is certainly not clear cut and the factual circumstances suggest a number of considerations. But, the wording of Rule 35 seems to deny the existence of a valid claim. The second paragraph of that Rule clearly recognizes that "conditions" may prevent the alleged guarantees contained in the preceding portion of the Rule. Here, the Health Department (not the Carrier) imposed a rather precise condition which precluded the performance of full day's 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1980.