

The Third Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation - (Amtrak)
Northeast Corridor

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

(1) The Carrier violated the Agreement when it required Messrs. G. Borden, J. Thompson, B. Hewitt, D. Settlemyer, J. Gray, A. Ashby, S. Truet, E. Nesbitt, I. Brown and H. Clark assigned to Gang C132 to suspend work for four (4) hours on January 22, 1985 (System File NEC-BMWE-SD-1246).

(2) Because of the violation referred to in Part (1) hereof, each claimant listed therein shall be allowed four (4) hours of pay at his respective straight time rate."

FINDINGS:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees 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 waived right of appearance at hearing thereon.

On January 22, 1985, Gang C-132 reported for their assignment on Bridge No. 60.07 over the Susquehanna River. The Supervisor determined, with the apparent concurrence of the Foreman, that the weather was too severe for the gang to perform its work on the bridge, and the Supervisor directed the Claimants to leave work.

The Foreman protested the gang being sent home and suggested a list of seven alternative projects it could work on. The Supervisor refused to assign any of the suggested tasks and ordered the entire gang to leave work.

The Carrier paid each member of Gang C-132 for four hours, under Rule 52 of the Agreement. The Organization claims that the Carrier misapplied Rule 52, however, and seeks pay for the balance of the day (an additional four hours) for each member of Gang C-132.

Rule 52(a) provides as follows:

"WORKING LESS THAN FULL DAY WHEN WEATHER
CONDITIONS PREVENT WORK BEING PERFORMED

(a) When the foreman and supervisor in charge determine that weather conditions prevent work being performed, employees in gangs of ten (10) or more reporting at their regular starting time and place for the day's work will be allowed a minimum of four (4) hours [five (5) hours for four (4) day gangs]; if held on duty beyond four (4) hours [five (5) hours for four (4) day gangs], they will be paid on a minute basis."

The Carrier maintains that Rule 52(a) requires payment for only four hours when a gang of ten or more is relieved from working regular assignment due to severe weather. There is no contractual obligation, the Carrier asserts, to find alternative work for the employees; and the projects suggested by the Foreman that day were "busy work" or work already assigned to other employees.

The Organization contends that Rule 52(a) requires the Foreman's agreement before the workday may be shortened from the contractually-mandated eight hours (as provided in Rule 32). In this case, the Foreman did not agree to a shorter workday, the Organization argues. Rather, he suggested other maintenance work the gang could perform despite the weather conditions.

This same issue has been considered previously on this property. In Third Division Award 26303, the Board denied a claim for a full day's pay when employees were sent home early because of bad weather, despite the Organization's contention that there was alternative work that could be done. In that decision, it was held:

"When [Rule 52] talks of conditions preventing 'work' being performed, it is most reasonable to conclude that it was referring to the Gang's regular and customary work, in other words, that work which related to its predominate and primary function. In this case, the Statement of Claim itself recognized weather conditions prevented the Gang from accomplishing its assigned task that day."

It is an accepted principle that once an issue between the same parties has been decided, a subsequent arbitration on that same issue will follow the original holding unless it can be shown that the original decision was palpably erroneous. This principle applies regardless of how the subsequent arbitrator might have ruled had he heard the case in the original instance.

We find that this issue previously has been decided on this property, and there has been no showing that that decision was clearly in error. Therefore, in accordance with the earlier decision, we must deny this claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.