NATIONAL RAILROAD ADJUSTMENT BOARD

Form 1 THIRD DIVISION Award No. 30188
Docket No. MW-28925
94-3-89-3-329

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(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 failed and refused to properly compensate Lineman W. Harris and T. Peters for the overtime work they were called to perform on April 17, 1988 (System Files NEC-BMWE-SD-2214 and NEC-BMWE-SD-2215).

2. The Claimants shall each be allowed an additional five and three tenths (5.3) hours of pay at their respective time and one-half rates."

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 employes involved in this dispute are respectively carrier and employe 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.

The basic facts are as follows. The Claimants are Electric Traction Department Linemen headquartered at Sunnyside Yard in New York City. The Claimants had been offered and accepted an overtime assignment for Sunday, April 17, 1988, to take the catenary electrical power out so that Track Department employees could safely perform cleanup with a front-end loader around Loop 2 and Sunnyside Yard. Because of adverse weather conditions, the Carrier decided (on Saturday night) to cancel the work. When that decision was made, the Power Director made attempts to reach the Claimants at home to notify them not to report; however, he was not successful. When the Claimants reported on Sunday morning, they were sent home and paid a call.

The central issue before the Board is whether Rule 54 (as argued by the Organization) or Rule 53 (as argued by the Carrier) applies. These Rules read as follows:

Rule 54 states:

"PROTECT SERVICE ON HOLIDAYS OR ON THE EMPLOYE'S ASSIGNED REST DAY

Employes required to report for 'Protect Service' on holidays, or on Sundays, when Sunday is an assigned rest day, shall be allowed a minimum of eight (8) hours at the rate of time and one-half."

Rule 53 states:

"CALLS

(a) Employes notified or called to perform service outside of and not continuous with the regularly assigned working hours,shall report for duty with reasonable promptness and shall be paid a minimum of two hours and forty minutes at the rate of time and one-half, if held on duty longer than two hours and forty minutes, they shall be paid at the rate of time and one-half on the actual minute basis.

(b) The time of employees so notified to report at a designated time to perform service outside of and not continuous with the regularly assigned working hours shall begin at the time required to report and end when released at headquarters. The time of employees so called to perform such service immediately shall begin at the time called and end when they are released at their headquarters."

The Organization argues that since the purpose of the assignment was to deenergize the catenary system, the Claimants were providing protection for the Track Department employees. It follows, therefore, in its opinion, that the Claimants were in "protect" service under Rule 54. The Organization also relies on Third Division Award 26777 which held flagging was protect service.

The Carrier contends that the work in question is not "protect service" and thus falls under Rule 53. Based on a very old Award (Decision No. 357 of the Pennsylvania-Long Island Railroad System Board of Adjustment, dated October 7, 1947) and statements from various employees, the Carrier contends that protect service is essentially stand-by service where no particular duty is assigned, but instead, the employee is to be available (to protect) to assist special trains or train movements in the event of trouble. For instance, Decision No. 357 involved protection for the Presidential train.

The Board is mindful, in evaluating the record, that the burden of persuasion is on the Organization. The Board views Rule 54 and particularly the key phrase "protect service" as, essentially, ambiguous. In this regard the burden is on the Organization to show that the Rule was intended to equate deenergizing electrical wires with "protect service" or that the Parties have applied the Rule in this manner.

The Organization offered nothing in terms of bargaining history or past practice to support its position. Instead, it made an argument based on the face of the language. Because the duties were to protect the crews from electrocution, it is, so goes its argument, "protect service." This Board does not find this logic persuasive. Parties often use words and phrases in ways to give them unique and special meanings. The railroad industry, in general, has its own unique "lingo," and each railroad its own particular dialect. "Protect service" could mean any number of things, and indeed, the fact the original framers of the Agreement put the term in indirect quotation marks and capitalized it, suggests they had a special and particular meaning in mind. If the Parties wanted to have Rule 54 apply to the generalized concept of "protection," they could have said so. Instead, they use a phrase that evidently had been coined to denote something in particular.

The Organization relied on Third Division Award 26777. This Board will not disturb the findings of that Award as it relates to its underlying facts. However, we do note that its facts related to flagging and, as such, is not the fact pattern here. We do not believe that its rationale (which is not particularly apparent) can be reasonably extended to this even more generalized situation.

The Board is not prepared, on the basis of this record, to say exactly what Rule 54 covers. It can be said, however, that we are not convinced, on the basis of this record, that it applies to the deenergizing of overhead wires. Accordingly, the claim must be denied for lack of proof.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 26th day of April 1994.