

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32183
Docket No. MW-31903
97-3-94-3-276**

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier violated the Agreement when it assigned junior employees to perform overtime service (snow removal) at Madison Yard, Madison, Illinois on February 25, 26 and 27, 1993 instead of assigning the senior employees in the affected classifications to perform said work (System Files 1993-13, 14, 15, 16 and 17 TRRA/013-293-15).**
- (2) The Carrier violated the Agreement when it improperly withheld junior Track Subdepartment employees from performing service during their regularly assigned workdays on February 25 and 26, 1993 (System File 1993-11 TRRA/013-293-15).**
- (3) As a consequence of the violation referred to in Part (1) above:**
 - (a) Mr. R. Gray shall be compensated at the machine operator's rate for ‘... (4.5) four and one half hours at time and one half, on February 25, 1993 and (7.5 seven and one half hours double time, in addition to this pay Mr. Gray also should be allowed time and one half for all the hours he worked on his regular shift on February 26, 1993. On February 26, 1993 Mr. Gray worked his regular shift 7:30 a.m. - 4:00 p.m. and overtime till 7:30 p.m. Mr. Gray is also entitled to**

(4.5) four and one half hours time and one half for February 26, 1993 and (7.5) seven and one half hours double time on the morning of February 27, 1993.'

- (b) Mr. D. Stogner shall be compensated at the machine operator's rate for '... (4.5) four and one half hours at time and one half, on February 25, 1993 and (7.5) seven and one half hours double time, in addition to this pay Mr. Stogner also should be allowed time and one half for all the hours he worked on his regular shift on February 26, 1993.'
- (c) Mr. R. Glenn shall be compensated at the track foreman's rate for '... (4.5) four and one half hours of time and one half, until 12:00 a.m. February 25, 1993 and (7.5) seven and one half hours at double time, until his regular shift started at 7:30 a.m. then Mr. Glenn was entitled to time and one half for his regular shift up until he was relieved at 7:30 p.m.'
- (d) Mr. W. Bailey shall be compensated at the machine operator's rate for '... (4.5) four and one half hours at time and one half, on February 25, 1993 and (7.5) seven and one half hours double time, in addition to this pay Mr. Bailey also should be allowed time and one half for all the hours he worked on his regular shift on February 26, 1993.'
- (e) Mr. R. Gartner shall be compensated at the track foreman's rate for '... (4.5) four and one half hours of time and one half, until 12:00 a.m. February 26, 1993 and (7.5) seven and one half hours at double time, until his regular shift started at 7:30 a.m. then he is entitled to time and one half for all hours he worked until 8:30 p.m. (I understand he was allowed a regular rate form (sic) 7:30 a.m. - 4:00 p.m.) at this time the carrier used another less senior Foreman (Mr. Gower)

to work from 8:30 p.m. - 12:00 a.m. (3.5) three and one half hours, and from 12:00 a.m. - 7:30 he would be entitled to (7.5) hours double time.'

- (f) Mr. R. Gower shall be compensated at the machine operator's time and one-half rate for '... all pay that Mr. West was allowed on February 27, 1993 from 8:00 a.m. - 6:00 p.m.'
- (4) As a consequence of the violation referred to in Part (2) above, Messrs. R. Gower, J. West, O. Rodriguez, J. Fenton, H. Goodwin, R. Jackson, R. McCranie, C. Perkins, L. Crouch, D. Matthes and J. Pfeiffer shall each be allowed a total of ten (10) hours' pay [five (5) hours for each of the days cited] at their respective straight time 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 employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

This dispute occurred on February 25 and 26, 1993 during a snowstorm at Madison Yard in Madison, Illinois. The employees held regular 7:30 A.M. to 4:00 P.M. shifts. Due to the snow the Carrier pulled all track employees from that shift into snow related activities. The substance of this claim is that the Carrier split its forces. Some were contacted and notified not to report and some who reported were sent home and informed they were to work a special second shift.

The Organization argues that there is no Agreement support for the Carrier's actions. Under Rule 28, Hours of Service, the Carrier is obligated not to change shifts without a 36 hour notice. Here, the Carrier created a first shift of 7:30 A.M. to 7:30 P.M. and a special second shift of 7:30 P.M. to 7:30 A.M. without concern to the Claimants' Agreement rights under Rule 28 or to overtime under Rule 31. The Organization alleges Carrier's action denied the Claimants their proper rates of pay.

The Carrier denies each of the claims arguing that it correctly applied Rule 37, Reporting and Not Used. Each employee who was taken off of their usual starting time was allowed a three hours' payment in addition to time on duty. The Carrier argues that its decision was based upon emergency conditions and its actions to assure safety. The Carrier maintains that to work everyone continuously for 24 to 48 hours would have been unsafe. The Carrier also argues that it remains its policy "not to work employees more than twelve (12) hours' continuous time on duty."

This Board has studied the procedural issue and the differences in each of the separate instances before us. This record finds no dispute on the following facts. This was a serious blizzard with a snowstorm that forced cancellation of most trains, crews and regular work. Carrier elected not to put all track forces working and then to keep them operational for a continual 24 or more hours. A study of this claim finds the Carrier's allegations of safety and Company policy to work employees a maximum of 12 hours' continuous duty is unrefuted. While differences between claims exist over DOT applicability or number of hours the Claimant would have worked without rest, the Rules and events are the same and generate the same conclusion.

The Board finds that where, as here, the Organization never challenged evidence of policy, practice, safety and snow related conditions the claim must fail. In the whole of this case, the Board takes judicious note of the facts and Rule language. We are aware that Carrier first worked the senior employees, but then replaced them after 12 hours with the junior employees, precipitating a claim that the senior employees should have been permitted continual employment at overtime rates. We are also aware that the 36 hour notice was not given. This is not the equivalent of prior Award support wherein Carrier acted for convenience (Third Division Award 13884). Under these specific emergency circumstances where the record indicates all Claimants worked overtime, but would possibly have required some employees to work as much as 48 hours continuously, the Board will not enter into conjecture about the safety considerations, which were undisputed. We find no Agreement violation here.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 13th day of August 1997.