Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35570
Docket No. MW-33417
01-3-96-3-942

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

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier refused to permit Machine Operators K. Drabus, M. St. Cyr, J.Northagen, P. Stenson, D. Melhouse, S. Hunt, F. Scheppler, E. Stenerson, R. Fiebiger, R. Hendricks, P. Thorp, A. Sundem and E. Samson, assigned to the tie gang working on the Noyes and Detroit Lakes Subdivisions, to perform their assigned duties on September 6, 1995 and thereafter failed and refused to compensate them for their lost wages (System File Rl.050/8-00243).

(2) As a consequence of the aforesaid violation, Messrs.K. Drabus, M. St. Cyr, J. Northagen, P. Stenson, D. Melhouse, S. Hunt, F. Scheppler, E. Stenerson, R. Fiebiger, R. Hendricks, P. Thorp, A. Sundem and E. Samson shall each be ' . . . reimbursed for the equivalent of one-fifteenth of his respective monthly rate, less the amount paid for September 6, 1995, and have all overtime, vacation, fringe benefits, and other rights restored which were lost to them as a result of the above violation."

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.

The Claimants are regularly assigned monthly-rated Machine Operators on the T1 Tie Gang, which was scheduled in September 1995 to work "compressed work weeks" of four, ten hour days, Monday - Thursday. After working three and one-half hours performing tie installation work on Wednesday, September 6, 1995, the Claimants were relieved from duty and sent home by Supervisor Hoban for the balance of that work day, due to "inclement weather." It is not disputed that despite the inclement weather other members of the T1 Tie Gang were kept on duty performing ballast unloading work for the balance of that day.

The Organization presented the instant claim on behalf of these Machine Operators, asserting a violation of their rights under Rule 26 Forty Hour Week, Rule 32 Reporting and Not Used and Appendix M Compressed Work Week. The Carrier denied the claims on the basis of the "inclement weather" provisions found in Rule 25 Basic Day-Basic Week, specifically 25(b) and 25(d), infra. The Organization responded with three counter-arguments: 1) that Rule 25 has no application to monthly-rated employees like the Claimants, 2) that even if, arguendo, tie installation could not be safely performed under the prevailing weather conditions, the Carrier was obligated to allow the Claimants to perform other work on their machines to fill out the ten-hour work day, e.g., "regular and/or preventive maintenance service," and 3) that the Carrier was arbitrary and discriminatory in sending the Claimants home while allowing the other employees to work in the inclement weather.

Each of these Parties cites countervailing authorities from other properties but the authoritative precedent in this case is found in Third Division Award 33266 involving the same issues, contract language and Parties. Each of the points and arguments presented in the instant case was definitively answered by the decision in Award 33266, as follows:

"The Board believes the crucial question in this case is whether Rule 25(d) supports the Carrier's action.

The Organization maintains that Rule 25(d) is inapplicable to the facts of this case because the Rule applies to hourly rated and not monthly rated employees. However, nothing in the language of Rule 25 specifically confines its application to hourly rated employees. In fact there is no mention made in the Rule of such employees. By contrast Rule 32 of the applicable schedule agreement specifically pertains to hourly rated employees. It was a Rule worded much like that of Rule 32 which was before the Third Division in Award 25183 relied upon by the Organization. Accordingly, we do not find that Award persuasive with respect to the question before us. In the final analysis we believe that Rule 25(d) does apply to monthly rated employees and thus to Claimants in this case.

The Organization also attacks the Carrier's reliance upon Rule 25(d) on the ground that the Carrier has not proven that the inclement weather on the claim date created an unsafe situation with respect to Claimants' performance of their work. We cannot agree. It must be borne in mind that Claimants' principle duty on the claim date was to lay rail. The fact that rain was falling supports the inference that for Claimants to perform such work would have constituted an unsafe condition.

The Organization further attacks the Carrier's reliance upon Rule 25(d) on the ground that there was additional work Claimants could have performed on the claim date. However, the Carrier counters with the allegation that such work had been completed by others by the time the Carrier decided to send Claimants home. As pertaining to the claim in this case reveals that the Carrier's argument in its Submission and its oral argument before the Board is nothing more than an extrapolation of issues and arguments addressed on the property. Accordingly, the Organization's argument has no merit. further evidence, the Carrier emphasizes that there was no overtime on the claim date to any employee for the performance of such work. The record contains no evidence refuting these contentions by the Carrier.

Finally, with respect to Rule 25(d) the Organization points out that other employees, including members of Claimants crew, were retained in service for their entire scheduled tour of duty while Claimants were sent home after three hours. However, there is no evidence or allegation that such employees laid rail after Claimants were sent home. Moreover, as noted above, all duties other than laying rail which Claimants could have performed were completed by the time they were sent home. At least there is no evidence to the contrary.

Nevertheless, the Organization argues that the Carrier was obligated to find work for Claimants in order that they could complete their ten-hour tour of duty on the claim date. We do not believe this argument has any merit in view of the clear terms of Rule 25(d).

In the final analysis we must conclude that the claim in this case is without agreement support."

We find no factual or contractual bases for distinguishing the instant case from that which was decided in Award 33266 and for the reasons set forth therein we will likewise deny the present claim.

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 24th day of July, 2001.