

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44410
Docket No. MW-43278
21-3-NRAB-00003-200364**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier reduced the basic day of eight (8) hours to three (3) hours for most of the employees assigned to Gang TP-12 on June 5, 2014 (System File C-14-P018-13/10-14-0338 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimants (employees assigned to Gang TP-12 who were not allowed to work the full basic day on June 5, 2014) shall now each be compensated for five (5) hours at their respective straight time rates of pay.”**

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.

On June 5, 2014, the members of Gang TP-12 reported for work on the Afton Sub-division at 6:30 AM, as scheduled. Shortly thereafter, it began to rain. Gangs sometimes work in inclement weather, but when thunderstorms began, gang members were told to stand by and wait for the weather to clear. After three hours, all but twelve gang members were released from duty for the day due to “inclement weather.” According to the Organization, by the time gang members reached their hotel, the rain was beginning to dissipate, with no further rain predicted. The gang members who had been dismissed were not called back to work. The Organization filed a Claim alleging that the Carrier had wrongfully deprived the Claimants of a full 8-hour day of work.

The parties’ Agreement addresses working hours, including during inclement weather. Rule 24, Forty Hour Work Week, states, in relevant part:

- A. Subject to the exceptions contained in the Agreement, a work week of forty (40) hours, consisting of five (5) days of eight (8) hours each, with two (2) consecutive days off in each seven (7) is hereby established....

Rule 25, Basic Day, states:

- A. Except as otherwise provided in this Agreement, eight (8) hours exclusive of the meal period shall constitute a day.
.
- C. Except as provided in this rule, regular established working hours will not be reduced below eight (8) hours per day.
- D. When less than eight (8) hours are worked for convenience of employes, or when regularly assigned for service of less than eight (8) hours on rest days and holidays, or when, due to inclement weather, interruptions occur to regularly established work period preventing eight (8) hours of work, only actual hours worked or held on duty will be paid for except as provided in Section E of this rule.
- E. When inclement weather conditions prevent employees from performing work on a regularly scheduled workday, they will be allowed a minimum of three (3) hours at pro rata rate. If held on duty over three (3) hours, actual time so held will be paid for.

Except in an emergency and when required to patrol track during heavy rains, employees reporting will not be required to work in the rain for the sole purpose of receiving payment under this Section. [11/15/96 Agreement, Paragraph 6]

The Organization does not dispute that there were isolated thunderstorms and rain the morning of June 5, 2014; the thrust of its complaint is that the weather was already clearing when management sent most of the gang members home. The Organization posits that scheduling difficulties that led to uncertainty regarding the availability of the track window necessary for the Gang to perform its work were the real reason for management's decision—rather than have the entire gang stay and wait to see if the track window became available, management used the weather as an excuse to send everyone back to their hotel rooms. This meant that the Carrier would only have to pay Gang members the three-hour inclement weather guarantee set forth in Rule 25.E, and not the full 8 hours to which they would be entitled if they stayed at work, even if they were unable to perform their duties. As further evidence that the weather was not bad enough to send everyone home, the Organization alleged that the twelve Gang members who were retained “to catch up” worked the remainder of the day.

The Carrier defends its actions by pointing out that, absent proof of arbitrariness, supervisors' decisions in matters such as sending employees home during bad weather should be given deference—they consider the safety and welfare of their employees as well as the effects of the weather on equipment and productivity. The decision to call a shortened workday was not made arbitrarily. Based on the existing conditions, the heavy rain and severe storm possessed the potential for unsafe working conditions, and the Agreement was properly applied. Moreover, contrary to the Organization's unsupported allegation, the employees who were held on duty were not able to work. There is no contractual support for the Organization's quibbling over degrees of weather inclemency; supervisors can only make decisions based upon the information available to them at the time. The Organization has the burden to prove that the Company acted improperly. It has not met that burden, and the Claim should be denied. At worst, this is a dispute in facts, which requires that the Claim be dismissed.

The issue of inclement weather is one that the Board has addressed before, and there are several principles that have been established. In Third Division Award 17193 (Brown 1969), the Board held:

The instant dispute revolves around the meaning of the phrase “inclement weather.” The term must certainly be deemed a relative one; weather might be classified as inclement for one activity but sufficiently clear for another activity. Essentially, therefore, it is a matter of judgment. Rhubarbs have developed over an umpire’s exercise of his discretion in halting a baseball game because of inclement weather—particularly in instances when the sun emerges brightly just after the stands have been emptied. In our instant case, Employees cite statistics showing the total rainfall for the day and compare it with other days that the crew was worked when the total exceeded that of the day in dispute. If anything, this proves that whoever made the decision to cease operations on the day in question did to do so because of any continuing scheme to deprive claimants of work. Indeed, there is a total absence of any indication of bad faith on the part of Carrier. Such being the case, we do not feel we have any right to second-guess the managerial decision to stop work. . . .

In the absence of a showing of bad faith underlying the decision, we will not tamper with management’s prerogative to decide whether or not the weather is sufficiently clement for the conduct of its work. (Emphasis added.)

Subsequent decisions adopted the “bad faith,” or “abuse of discretion” standard for evaluating management decisions to stop work due to inclement weather. *See, e.g., Third Decision Awards 35006, 35631, 36724 and PLB 4402, Award 26. In Third Division Award 40387, the Board expounded on the standard:*

Supervision has a wide range of reasonable discretion to base decisions on weather conditions. Its action here falls squarely within its permissible authority. It was rooted in sound available information. There is no evidence of improper purpose....

Weather predictions are highly unreliable. The Agreement does not require the Carrier to guarantee accurate weather forecasting.

In Third Division Award 40892, cited by the Organization in support of its position, the Board found that the conditions relied upon by the Carrier to justify its inclement weather decision were *not* “outside the norm expected in winter time in Iowa” and thus did not warrant pulling the gang from their full schedule of work.

Turning to the record in the instant case, there is no dispute that thunderstorms and rain were present on the morning of June 5, 2014. This is attested to by a statement in the record A submitted by one of the Claimants:

... Directly after the morning job briefing, there was a line of storms moving into our area. There was also a severe thunderstorm warning issued just to the north of our tie up location. I can also remember the dispatcher issuing a high wind warning over the radio to trains in the area. We then started to experience lightning and heavy rain. We were told to get inside the vans and wait it out. The lightning and heavy rain passed within an hour or so, and it turned into a light rain....

There is also a brief statement in the record from the supervisor: "This was a weather day where nobody asked to stay late once lightning and weather approached. The remaining guys chose to stay and wait for it to clear to continue to utilize the rest of the window." The Claimants' statements are clear that they were not given a choice to stay or not, but were ordered to return to their hotels. The record also includes copies of local weather forecasts, which predicted rain starting in the early morning, with thunderstorms continuing through the 11:00 AM hour and the weather clearing in the afternoon, after approximately 1:00 PM.

Based on the information in the record, it appears that it was still raining after three hours, and the Carrier was justified in sending the Claimants home due to the inclement weather. But the Organization has raised two arguments that must be addressed. First, it implies that once the weather had cleared, management had an obligation to recall the gang to complete their scheduled workday. There is nothing in the Agreement that obligates the Carrier to do that.

Second, the Organization contends that, in fact, management was motivated to send the gang home not because of the weather, but because it was uncertain whether the gang would get the track time it needed to work as scheduled. In other words, saying that the gang was sent home "due to inclement weather" demonstrates bad faith on the part of the Carrier. If that is true, the Claim should be sustained. Unfortunately, it is not possible to make a determination one way or the other based upon the record before the Board. One Claimant's statement indicates that "we were notified by our Ast. Roadmaster Ray Kite that we were being sent back to the hotel, because there wasn't going to be enough track window for tie production this day." The other Claimant statement says nothing about the track window, and there is no other evidence in the record regarding the track window. In light of this evidence, the

Board has concluded that the Organization has not met its burden of proof to establish that the Carrier acted in bad faith when it sent members of Gang TP-12 home due to inclement weather on June 5, 2014.

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 April 2021.