

PARTIES TO DISPUTE: Baltimore and Ohio Railroad Company
and
Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM: "Claim for two hours each for the Trackmen listed below and six hours each for those other than Trackmen listed below account the Force not working on April 21, 1972 because of inclement weather."

(Those employees listed included 7 Trackmen, 1 Assistant Foreman, 7 Machine Operators)

OPINION OF BOARD: On the date in question the fifteen employees referred to in the claim reported to their work location at 7:00 AM. It was raining. At 9:00 AM the Assistant Division Engineer arrived at the job site and found that none of the men were working. The record shows that the Machine Operators had refused to work due to weather and therefore the Trackmen could not work because "Without the machines this unit is unable to perform the installation of ties as scheduled." The inference is clear that if the Machine Operators had been willing to work the whole unit would have been working, weather notwithstanding. The record also shows that the Assistant Division Engineer requested that the machines be started and the Operators refused to do so. There is no dispute between the parties as to the above set of circumstances.

When advised that the Operators refused to start their

machines the Assistant Division Engineer told the men to go to work or he would allow them only two (2) hours' pay for the day.

Petitioner, in support of the claim, has cited Rules 16(a), 16(b) and 17(a) of the Agreement.

These Rules state, in pertinent part, as follows:

16(a) - "Regularly established daily working hours will not be reduced below eight (8) for five (5) days per week to avoid making force reductions, . . ."

16(b) - "Trackmen and extra gang men required to report at usual starting time and place for the day's work will be allowed a minimum of four (4) hours when conditions prevent work being performed.

17(a) - "There is hereby established for all employees covered by this agreement, subject to the exceptions contained hereafter in this rule and Rule 60 (b-2), a work week of 40 hours, consisting of five days of eight hours each, . . ."

Petitioner alleges that, under the circumstances in the instant case, the Carrier official unilaterally reduced the Claimants' work day on the day in question when he told them to either go to work or they would be paid for only the two hours they had been at the work site, which was in violation of Rule 16(a). We do not agree. The fact of the matter is that the Operators refused to go to work, were told by proper authority to go to work and still refused, and were therefore told to leave the property. Their opportunity to work a normal eight (8) hour day, which they were requested to do when they were told to go to work, was restricted by their own inaction - it was the refusal to work that put in motion

the events that followed. Obviously, an employee who refuses to go to work when directed to do so by proper authority exposes himself to possible penalty - in this instance "no work, no pay."

However, insofar as the Trackmen are concerned, we do agree that Rule 16(b) entitles them to a payment of four (4) hours minimum when conditions prevent work being performed after they have reported for work at the usual starting time, as alleged by Petitioner. The condition that prevented them from working, in this case, was not the inclement weather but the refusal of the Operators to work. As the Carrier stated, "Without the machines this unit is unable to perform the installation of ties as scheduled."

We do not find that Rule 17(a) has any application to the factual situation presented to us. This Rule, in essence, merely defines that the 40-hour week will consist of five eight-hour days instead of some other combination of days and hours within a week, the total of which would equal forty.

Petitioner, in his submission to this Board, made much of the conditions of weather on the claim date and inferred, at least, that employees had the option of determining whether the weather on a particular day was suitable for work. We will dispose of this portion of the argument by drawing attention to Award No. 18012 which stated, in part,

"It is a managerial prerogative to determine when work is to be performed, as exemplified in many of our awards."

The subject requires no further discussion.

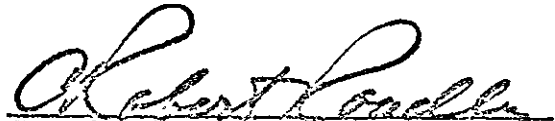
AWARD:

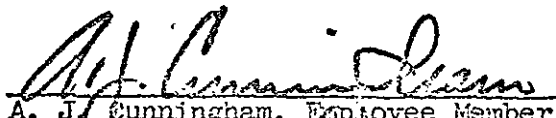
Claim sustained insofar as the Trackmen are concerned, i.e. two (2) additional hours' pay at their straight time hourly rate..


Remainder of the claim is Denied.

ORDER:

The Carrier shall comply with this Award within thirty (30) days of the date of this Award.


C. Robert Roadley, Neutral Member


A. J. Cunningham, Employee Member


L. W. Burks, Carrier Member

Baltimore, Maryland
March 11, 1974