

Award No. 11
Docket No. 11

PUBLIC LAW BOARD NO. 2452

PARTIES Brotherhood of Maintenance of Way Employees
TO
DISPUTE: and
Western Maryland Railway Co.

STATEMENT Claim on behalf of Welder I. J. Vance and
OF CLAIM: Welder Helper R. J. Arbuthnot for two (2) hours
overtime account Track Inspector and Assistant Track
Inspector cleaning switches at Durbin, West Virginia
on March 9, 1978.

FINDINGS: By reason of the Agreement dated June 14, 1979, and
upon the whole record and all the evidence, the Board
finds that the parties herein are employe and carrier within the
meaning of the Railway Labor Act, as amended, and that it has
jurisdiction.

The conference issue raised here is comparable with
the one contained in Docket No. 2 and resolved in Award No. 2.
For the reasons stated in said Award No. 2, this issue is
resolved in favor of the Carrier.

This claim, presented on April 26, 1978, is predicated
on the allegation that the Carrier violated the Agreement on
March 9, 1978, when, Track Inspector Jack Fuhrman and Assistant
Track Inspector Paul Gray were used to clean switches at Durbin,
West Virginia. Claimants were available for that work. The
claim is for two hours' overtime.

In denying the claim on June 13, 1978, Carrier's
Manager of Engineering wrote that neither Fuhrman nor Gray worked
overtime on March 9, 1978.

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Appealing the denial, Employees wrote on July 25, 1978, that while no overtime pay was reflected on Fuhrman's or Gray's time sheets, they actually worked two hours beyond their scheduled hours and they were allowed two hours time off instead of pay, in accordance with the Agreement.

On September 18, 1978, Carrier again denied the claim for two reasons. First, Carrier contends that if additional employees were required on March 9, 1978 to remove the snow, Carrier would have been obliged to call employees from Force 1107 and not the Claimants. Second, there was a heavy accumulation of snow on March 9, 1978 at Durbin, West Virginia. An emergency existed. It was necessary to clear the snow and ice immediately so as to avoid delay of trains. Fuhrman and Gray were working in the area. It was, therefore, proper to utilize their services in the emergency. Claimants were working at Belington, West Virginia, fifty miles away.

It is of no consequence that the Carrier did not raise the issue of emergency in the first instance. It was raised on the property before this claim was submitted to this Board. Nowhere do employees categorically deny that an emergency existed.


For the reasons herein stated, the Board finds that the Carrier did not violate the Agreement and that the claim has no merit.

AWARD

Claim denied.

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DAVID DOLNICK, Chairman and Neutral Member


W. C. COMISKEY, Carrier Member


WILLIAM E. LA RUE, Employee Member

DATED: April 16, 1980