

Award No. 14  
Case No. 38

Public Law Board No. 2630

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees

and

The Baltimore and Ohio Railroad Company

STATEMENT  
OF  
CLAIM:

1. Carrier violated Rule 1(d) and other Agreement provisions when it called J. V. Gianangelli, Track Inspector, on November 27, 28 and 30, 1977, to perform service outside his tour of duty in violation of August 7, 1975 Memorandum of Agreement.
2. As a result of such violation Claimant J. D. Fatula, Trackman, be compensated an additional 11 hours above the 6½ hours compensated for November 27, 1977.

FINDINGS:

Because of a heavy accumulation of snow at Benwood, West Virginia, members of claimant's gang were called to remove snow from switches and crossings at Benwood. Claimant was overlooked for that work on November 27, 1977 and on that basis has been allowed

6½ hours by Carrier, the amount of hours worked by members of his force.

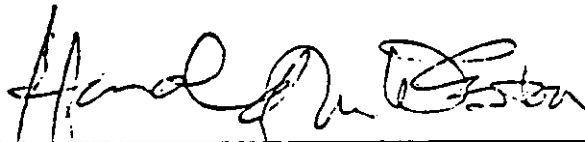
The record indicates that Track Inspector Fatula was used to perform repair duties for 3 hours on November 28 and 4½ hours on November 30, 1977. That work, under Rule 1(d), belongs to trackmen. The record does not establish that Mr. Fatula was used for that duty because of a true emergency. The mere fact that snow has accumulated does not, in the absence of additional evidence, prove that an emergency exists. When Inspector Fatula set out on the assignment, Carrier was well aware that the snow was on the tracks and switches and would have to be removed. The work of clearing the track was not unanticipated while claimant was available for duty and not far from Benwood.

The fact that claimant was in a gang that would not ordinarily be assigned to that location does not defeat the claim. Rule 1(d) was violated and, as a trackman, claimant is entitled to recover in the absence of a claim by a trackman with superior rights to the snow removal work. See Third Division Award 14762.

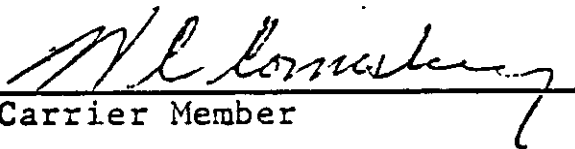
The claim will be sustained to the extent of 7½ hours at the regular rate; the evidence is not sufficient to show that additional time should be allowed or that overtime is payable.

AWARD: Claim sustained to the extent of 7½ hours straight-time pay. To be effective within 30 days.

Adopted at Baltimore, Maryland, *August 15*, 1981.



Harold M. Weston, Chairman

  
Carrier Member  
Employee Member