

PUBLIC LAW BOARD NUMBER 3932

Award Number: 7
Case Number: 7

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM

"This claim is on behalf of the employees listed foe (sic) unfair enforcement of rule 52.

On March 21, 1984 the members of G182 (listed) were advised to work in the rain or go home, while T. Lynch, welder in G182 was allowed to complete the day performing miscellaneous duties.

In light of this violation of rule 52, I am requesting 4 hours at the pro rata rate for the affected employees. Please advise if this claim will be honored and the pay period in which it will be compensated.

Foreman	M. J. Holland #172-44-0242	4 hours
T.D.	A. Berger #177-48-3240	4 hours
T.D.	M. Stankiwiz #178-50-5532	4 hours
Trackman	A. N. Williams #193-26-4433	4 hours
Trackman	A. L. Williams #193-48-8284	4 hours
Trackman	R. Cannon #176-28-7124	4 hours
Trackman	B. Simbala #168-44-3947	4 hours
Trackman	R. Cristobal #199-28-1131	4 hours

Trackman

L. Brown
#203-46-2418"

4 hours

FINDINGS

By letter dated April 20, 1984, the Organization filed Claim on behalf of Claimants seeking compensation on the grounds that those employees were treated in a discriminatory fashion in violation of Rule 52 on March 21, 1984.

The issue to be decided in this dispute is whether Carrier violated Rule 52 on the date in question by allowing one employee to complete service while advising other employees to either work or return home.

The position of the Organization is that Carrier violated Rule 52 of the Agreement in several respects through its actions on the date in question. The Organization alleges that the Claimants were arbitrarily sent home with four hours' compensation while Carrier allowed another employee to complete his full shift, which it contends constitutes discrimination on Carrier's part.

Initially, the Organization contends that Carrier violated Rule 52, "Working Less Than Full Day When Weather Conditions Prevent Work Being Performed", in several respects. First, the Organization alleges that the foreman did not determine that weather required the gang to be sent home as required by Rule 52. Second, the Organization maintains that Rule 52(a) was improperly

invoked since ten or more members of the gang did not report for work. The Organization cites Rule 52(a) which states, "...employees in gangs of ten or more...will be allowed...", and argues that since the gang consisted of only nine men, Rule 52(a) was not properly utilized by Carrier. The Organization alleges that Carrier admitted the lack of ten members since it stated that the tenth employee (Mr. Lynch) was not associated with the Claimants' gang on the date in question but rather was assigned to a training class. The Organization argues alternatively that if Lynch is considered part of Claimants' gang, thus invoking Rule 52(a), then Carrier acted arbitrarily by allowing him to perform full service while requesting the other members of the gang to go home. The Organization maintains that Carrier has adopted directly contradictory positions in an attempt to defend itself regarding this claim, and that its position is untenable. The Organization concludes that under either position the claim must be sustained, either on the basis of wrongful invocation of Rule 52 or that the Claimants were treated in a discriminatory manner.

The position of the Carrier is that the Claimants in this Case were treated fairly and within the parameters of Rule 52.

Initially, Carrier argues that Rule 52 in essence lacks applicability to the claim, since the employees in question were merely "advised" to work in the rain or go home. Carrier argues that Rule 52 is inapplicable since the rain did not prevent the

Claimants from opting to work. Carrier admits that the rule was applied on the date in question, but argues that its use was in error, and that the Claimants deserved no compensation for electing not to work when it was possible to do so.

Carrier argues alternatively that under Rule 52, the Claimants in this case were not entitled to any compensation in excess of the four hours they received. Carrier argues that the Claimants had an opportunity to receive eight hours' compensation by staying and completing their assignments. Carrier further argues that the Claimants were not treated in a discriminatory manner since Lynch worked at a different location performing different work than the Claimants, and was compensated accordingly. Carrier again contends that the Claimants could also have received eight hours' compensation if they had decided to work.

Finally, Carrier rejects the Organization's position concerning the ten man requirement of Rule 52. Carrier argues that the Claimants' gang consists of 12 men and therefore meets the ten man requirement. Carrier maintains that even if less than ten men were on the gang in question, Rule 52 would still apply since the intent of the rule is to treat employees equally in situations involving inclement weather. Carrier further maintains that the Organization's interpretation would lead to absurd results whereby the size of the gang would determine their rights under Rule 52. Carrier therefore maintains that Rule 52

is applicable to the claim presented.

After review of the record, the Board finds that the Organization's Claim must be denied.

Initially, we find that both parties appear confused and in conflict concerning Rule 52. Both Carrier and the Organization indicate that Rule 52 should not have been applied to the situation in question, and yet both rely to some extent on Rule 52's application in support of their positions.

Notwithstanding the above, we find that the Claimants are not entitled to the compensation requested for several reasons. Assuming initially that Rule 52 is inapplicable, we do not find that the Organization has established any right to the compensation requested. The Claimants were given an opportunity to remain at work and thereby receive eight hours of compensation, but voluntarily decided to go home and accept four hours' pay. We do not find under those circumstances that the Claimants are entitled to any additional compensation. It is questionable whether the Claimants were entitled to the four hours' compensation granted; however, that issue is not before this Board. Further, we find no evidence that Carrier treated the Claimants in a discriminatory fashion. The Claimants had the same opportunity as Lynch to work a full shift yet elected not to do so. Additionally, it appears that Lynch was performing in a capacity different from that of the Claimants. In any event, we

find that the Claimants were treated in a non-discriminatory manner by Carrier.

Finally, assuming that Rule 52 is applicable, we find that the Claimants were properly compensated under that rule. Rule 52 specifically mandates a minimum four hour payment when inclement weather prevents the performance of work. Since the Claimants were compensated accordingly, we can find no violation of that rule. It may have been error for Carrier to invoke the rule, but we can find no prejudice to the Claimants as a result, since the invocation of the rule was on a voluntary basis. Finally, we find the size of the gang in question of no relevance under the facts of this Case, since the Claimants had the opportunity to work a full day, which would have rendered Rule 52 completely inapplicable. Once the Claimants chose to go home, the only question remaining is whether they were eligible for four hours under Rule 52. In the Board's view, they were not entitled to anything in addition to four hours' compensation.

PLB 3932-7

AWARD

Claim denied.

Nicholas Kumar
Neutral Member

Sc Hing
Carrier Member

Pat Dadd
Organization Member

DATE: 8-26-86