

PUBLIC LAW BOARD NUMBER 3932

Award Number: 9  
Case Number: 9

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 for unfair enforcement of Rule 52.

On March 28 and 29, 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 8 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.

		3/28/84	3/29/85
Foreman	M. J. Holland #172-44-0242	4 hours	4 hours
T.D.	A. Berger #177-48-3240	4 hours	4 hours
T.D.	M. Stankiwiz #178-50-5532	4 hours	4 hours
Trackman	A. N. Williams #193-26-4433	4 hours	4 hours
Trackman	A. L. Williams #193-48-8284	4 hours	4 hours
Trackman	R. Cannon #176-28-7124	4 hours	4 hours
Trackman	B. Simbala #168-44-3947	4 hours	4 hours

Trackman	R. Cristobal #199-28-1131	4 hours	4 hours
Trackman	L. Brown #203-46-2418	4 hours	4 hours
Trackman	H. H. Nguyen #586-46-8643"	4 hours	4 hours

#### FINDINGS

By letter dated April 20, 1984, the Organization filed claim on behalf of the Claimants seeking compensation contending that Carrier violated Rule 52 of the Agreement on March 28 and 29, 1984, when it allowed a member of the Claimants gang to remain on duty while advising the Claimants that they could work in the rain or go home.

The issue to be decided in this dispute is whether Carrier violated Rule 52 on the dates 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 on the dates in question through its arbitrary and discriminatory treatment of the Claimants. The Organization initially asserts that Carrier violated Rule 52 by failing to receive proper authorization to send the Claimants home due to inclement weather. The Organization maintains that without such a determination by the Foreman it was improper for Carrier to advise the Claimants that they could go home.

The Organization further argues that Carrier's allowing one of the members of the Claimants gang (T. Lynch) to remain on duty while sending the Claimants home constituted discriminatory treatment in violation of Rule 52. The Organization contends that the eight hours of compensation afforded Lynch by Carrier is discriminatory since the Claimants were only offered four hours' compensation on the dates in question.

The position of the Carrier is that the Organization has failed to sustain its burden of proof regarding the claims presented.

Carrier argues that Rule 52 was erroneously applied in the present case, since the Claimants were merely advised to either work or go home and were not required to leave work due to inclement weather. Carrier admits that the rule was applied on the dates in question, but argues that the voluntary nature of the Claimants' decision indicated that the rule was used in error. Carrier argues, however, that since Rule 52 was applied, there is no basis for any compensation beyond the four hours allotted under the rule. Carrier maintains that Rule 52 required that only four hours' compensation be paid when work is called off due to inclement weather. Carrier argues that the Claimants could have been compensated for eight hours if they decided to

remain on duty by choice. Carrier therefore argues that the Claimants were not discriminated against in relation to Lynch, since all parties had an opportunity to work a full day. Carrier argues further that Lynch was at a different location performing different work, and was therefore not singled out for special treatment.

After review of the record, the Board finds that the Organization's claim must be denied. This case presents similar facts to those before this Board in Cases 7 and 8. We find that the Organization has failed in all of these cases to establish any violation of Rule 52.

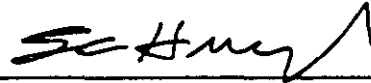
Since the Organization concedes the applicability of Rule 52 to the present dispute, we need not discuss that rule's disputed application. Under Rule 52, it is clear that the Claimants properly received the four hours' compensation for each date in question. While a question exists as to the Claimants' entitlement to the four hours' compensation, given the voluntary nature of their decision to leave work, that issue is not before this Board. The only issue before us is whether the Claimants are entitled to eight hours' compensation under Rule 52 for the dates in question. The only basis for the compensation requested is that the Claimants were treated in a discriminatory manner vis-a-vis Lynch. However, given the fact that the Claimants

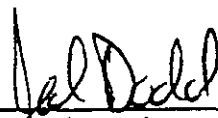
could have elected to remain on duty and collect eight hours' compensation, we do not find that they were arbitrarily denied the additional four hours' compensation. If Carrier had ordered the Claimants to go home while retaining Lynch, this case might reach a different result. However, it is undisputed that the Claimants elected to leave work and accept four hours' compensation under Rule 52. Therefore, we cannot find the Claimants eligible for any compensation beyond that provided for in Rule 52.

AWARD

Claim denied.

  
\_\_\_\_\_  
Neutral Member

  
\_\_\_\_\_  
Carrier Member

  
\_\_\_\_\_  
Organization Member

DATE: 8-26-86