

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4768

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

BURLINGTON NORTHERN RAILWAY COMPANY

AWARD NO. 66

Carrier File Nos. 6MWA 91-6-13E, 91-8-21B, 91-9-3A&B
Organization File No. C-91-PO18-2, 3, 4, 5

STATEMENT OF CLAIM

1. The Carrier violated the Agreement when it required members of P-811 Gang Nos. 1 and 2, Ballasting Gang Nos. 1 and 2 and Destressing Gang Nos. 1 and 2 to suspend work on their regularly assigned positions on April 18, 1991.
2. The Carrier violated the Agreement when it required members of Wood Tie Gang TP-60 to suspend work on their regularly assigned positions on April 18, 1991.
3. The Carrier violated the Agreement when it required Machine Operator J. C. Francke to suspend work on his regularly assigned position on April 18, 1991.
4. The Carrier violated the Agreement when it required members of a small steel gang (RP-60) to suspend work on their regularly assigned positions on April 18, 1991.
5. As a consequence of the violation referred to in Part (1) above, the affected employees of P-811 Gang Nos. 1 and 2, Ballasting Gang Nos. 1 and 2 and Destressing Gang Nos. 1 and 2 shall each be allowed the difference between the eight (8) hours' pay to which they were entitled and the amount they were paid on April 18, 1991.
6. As a consequence of the violation referred to in Part (2) above, the affected employees of Wood Tie Gang TP-60 shall each be allowed the difference between the eight (8) hours' pay to which they were entitled and the amount they were paid on April 18, 1991.

7. As a consequence of the violation referred to in Part (3) above, claimant, J. C. Francke shall be allowed four and one-half (4.5) hours' pay at the Group 2 Machine Operator's rate.

8. As a consequence of the violation referred to in Part (4) above, Messrs. A. M. Bell, L. R. Miller, D. A. Parde, D. D. Jones, S. A. Hrenchir and D. P. Luben shall each be allowed the difference between the eight (8) hours' pay to which they were entitled and the amount they were paid on April 18, 1991.

F I N D I N G S

On April 17, 1991, several Organizations, including the BMW, engaged in strike action against various Carriers, including the Burlington Northern. The strike was ended at 12:40 a.m., April 18, when legislation was signed by the President.

The Organization's Vice Chairman advised Carrier officials that, owing to strike duty (picketing, etc.) employees might not be reporting for work as scheduled on April 18. While there is some dispute as to what the Carrier was advised specifically by the Vice Chairman, there is no doubt that some word was left as notification of at least some employees not reporting.

The Claimants herein are assigned to various Maintenance of Way gangs, plus one individual Machine Operator. The Carrier asserts without contradiction that absenteeism among various work groups ranged from 21 to 40 per cent on April 18. When the Claimants reported for work, they were advised, in view of the high absenteeism, that "conditions prevent work from being performed". As a result, the Claimants were sent home and were paid for three hours' work, which the Carrier contends met its obligation under Rule 25E. Rule 25 reads in pertinent part as follows:

RULE 25. BASIC DAY

A. Except as otherwise provided in this Agreement, eight (8) hours exclusive of the meal period shall constitute a day. . . .

C. Except as provided in this rule, regular established working hours will not be reduced below eight (8) hours per day.

D. When less than eight (8) hours are worked for convenience of employees, or when regularly assigned for service of less than eight (8) hours on rest days and holidays, or when, due to inclement weather, interruptions occur to regularly established work period preventing eight (8) hours work, only actual hours worked or held on duty will be paid for except as provided in Section E of this rule.

E. When hourly rated employees are required to report at usual starting time and place for the day's work and conditions prevent work being performed, they will be allowed a minimum of three (3) hours at pro rata rate. If held on duty over three (3) hours, actual time so held will be paid for. This will not apply to employees notified in advance of usual starting time. Except in an emergency and when required to patrol track during heavy rains, employees reporting will not be required to work in the rain for the sole purpose of receiving payment under this Section.

The Organization reads Rule 25D and 25E together, noting the Rule 25D specifies three reasons for paying less than eight hours' pay, except as provided in Rule 25E. The Organization contends that the Rule 25E "conditions [which] prevent work being performed" simply were not present on April 18, referring again to the "conditions" in Rule 25D. The Organization notes that Rule 25E also refers to weather "conditions", as does Rule 25D.

Beyond this, the Organization argues that, when there is an interruption in regular work assignment, consistent past practice has been to the effect that alternate work assignments are provided

to complete an eight-hour day, citing this Board's Award 49 in support.

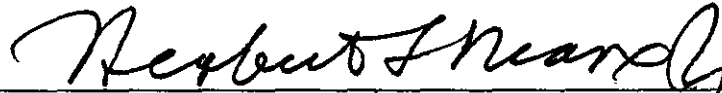
The Carrier points to the obvious difficulty of undertaking normal assignments in the face of such high absenteeism under the special strike-ending circumstances. The Carrier argues that it retains the prerogative to determine what work is required to be performed.

Award ⁴~~69~~ is clearly distinguishable from the circumstances here under review. There, past practice was cited to show that when a scheduled assignment is interrupted, alternate assignments are available to complete the eight-hour day. Here, the question was whether the diminished gangs warranted even the commencement of work.

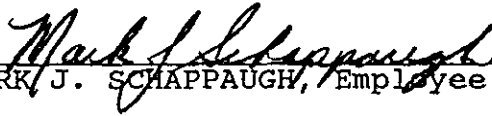
The Board determines that the three-hour payment to the Claimants was proper under Rule 25E. The Board finds that the Rule 25E "conditions" are not confined to those listed in Rule 25D. The Carrier was clearly entitled to take account of the unavailability of complete gangs from the outset of the assigned shift, making normal work assignments impractical.

A W A R D

Claim denied.



HERBERT L. MARX, Jr, Chairman and Neutral Member



MARK J. SCHAPPAUGH, Employee Member



D. J. MERRELL, Carrier Member

NEW YORK, NY

DATED: *March 13, 1995*